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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-6830

Martha Smith, Kathleen Post, and William Post,

Appellants,

v.

Town of Sullivan's Island,

Respondent.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-6830

Smith
PLAINTIFF(S)

Town of Sullivan's Island
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2013 MAR 13 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Judgment on the pleadings was taken under advisement on February 14, 2013 and is now denied solely based on the pleadings.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	2060 Judge Code	3/08/13 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO. 2012-CP-10-6830
MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,	)	
Plaintiffs,	)	**FINAL ORDER AND JUDGMENT**
v.	)	
TOWN OF SULLIVAN'S ISLAND,	)	
Defendants.	)	

FILED
2014 JUN -9 PM 3:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter is before the Court for final disposition after a bench trial conducted on May 15 and 16, 2014. After hearing the testimony, examining the exhibits in evidence, considering the arguments of counsel, and applying the applicable law, this Court enters the following findings of fact and conclusions of law and renders judgment in favor of Defendant, the Town of Sullivan's Island ("Defendant" or the "Town").

FINDINGS OF FACT

1. The Town is the owner of land within its municipal boundaries that is the site of the Sullivan's Island Elementary School (the "School"), a public school operated and administered by the Charleston County School District ("CCSD").
2. CCSD operated the original School under a 99-year lease entered into in 1954 between the State of South Carolina and CCSD. That lease was assumed by the Town later, upon its incorporation.
3. Because of concerns about the then existing building's age and structural integrity, especially its vulnerability to an earthquake, CCSD vacated the original school building a

few years ago and moved the students to Mamie P. Whitesides Elementary School in Mount Pleasant.

4. CCSD offered to demolish and rebuild the School on certain conditions. One of CCSD's conditions was that a new facility would have to accommodate at least 500 students. Additionally, the new facility would also have to be in compliance with current building standards and current design criteria for elementary schools.
5. On January 19, 2010, the Town Council for Sullivan's Island unanimously adopted a resolution in favor of the new school.
6. On May 20, 2011 the Town Council for Sullivan's Island unanimously adopted a second resolution supporting the new school under the conditions put forward by CCSD, including rebuilding of the school for an enrollment of up to 500 students if required.
7. In the summer of 2011, prior to beginning any work on the School site, CCSD and the Town negotiated a new 75-year lease for 5.61 acres of the site, ("the Lease").
8. The board of CCSD approved the Lease at its meeting on August 15, 2011.
9. After three readings with favorable votes at duly noticed Town Council meetings on August 16, September12, and September 20, 2011, the Lease was ratified and signed at the meeting of Council on October 18, 2011, by the adoption of Ordinance No. 2011-05.
10. Several provisions of the Lease address design, design review, and construction, including the following:

> 10. IMPROVEMENTS AND ALTERATIONS. *Any new structures to be placed on the Leased Property, or any improvements to the Leased Property should not be made without the prior written consent of Landlord.* Tenant hereby agrees to build the anticipated new school, taking into consideration the compatibility of the existing buildings located nearby and within the Town, with intentions to achieve neighborhood compatibility. In achieving neighborhood compatibility, *the Tenant shall*

consider the standards of neighborhood compatibility as set out in Section 21-111 of the Town of Sullivan's Island Ordinances.

Tenant agrees to design the new school with input from the Town Council, or their duly appointed agents with the understanding and agreement that no construction shall begin until such plans have been approved by the Town Council. The Landlord and Tenant agree to create procedures for the Town and/or its agents or boards, to review the design in phases, and to review the construction pursuant to the design and specifications.

11. DESIGN APPROVAL PROCESS. Tenant shall submit to the Landlord all plans and designs for the new school to be located on the Leased Property. The approval process shall include the following approval steps:

Conceptual Design Parameters.

The parties agree that the conceptual design parameters for the new school building shall include a maximum of 74,000 square feet of conditioned space as defined by the International Building Code, with a maximum of 34 feet for Building A, with maximum of 48 feet height for two-story building (Building B), if required and justified to Council, with a maximum of 42 feet for multi-purpose building (Building C), and with a maximum of 35 feet height for Building D.

***

13. BUILDING INSPECTION. All building inspections, including the approval of the plans and specifications, shall be the sole responsibility and obligation of the Tenant and of the State of South Carolina, Department of Education, who shall approve all plans and inspect all construction *in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide.* It shall be the sole obligation and responsibility of State Superintendent of Education to approve construction and issue a certificate of occupancy at the completion of construction, prior to the occupation and use of the school building. The Town of Sullivan's Island may, but shall have no obligation to, require further inspections prior to occupancy, all at the expense of the Tenant. Notwithstanding any provisions here, the Town of Sullivan's Island shall not be

responsible for any future design, construction, maintenance or inspection of the new school.

11. The 5.61 acres of the site subject to the Lease between the Town and CCSD is not located in any of the Town's five defined zoning districts. However, the Town and CCSD agreed the Town could use the enforcement powers prescribed in the Town's zoning ordinance with respect to the leased property and the Town retained the "unrestricted right, authority, and power" to zone the leased property in the future in sections 30 and 31 of the Lease, respectively.

12. During September and early October 2011, a group known as "Islanders for a Smaller School" drafted and circulated for signature a document entitled "A Petition to Reconsider the Construction of the Sullivan's Island Elementary School, as Currently Proposed (22 September 2011)" (the "Petition").

13. The Petition was submitted to the Town on October 10, 2011, and presented to Council at its meeting on October 18, 2011, the same meeting where Council ratified and signed the Lease.

14. The Petition purported to be signed by more than 15% of the qualified electors of the Town as of the last regular municipal election.

15. After receiving the Petition, the Town submitted it to the Charleston County Board of Elections and Voter Registration that certified the Petition was signed by more than 15% of the qualified electors of the Town as of the last regular municipal election.

16. The cover page of the Petition states that it purports to act under the provisions of South Carolina's initiative and referendum statute, S.C. Code §5-17-10, and states as follows:

> Pursuant to S.C. Code Ann. §5-17-10, we the undersigned as registered voters of Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School

(SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope and type for our historic and environmentally sensitive residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island Elementary School As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in or about the present location of the SIES. (emphasis in original)

17. The ordinance that the Petition sought to have placed on the election ballot as a referendum (the "Initiated Ordinance") was couched as two provisions that were stated in the alternative:

> Section 1-5 (a-b): PROVISIONS
>
> (a) Any school built or rebuilt on Sullivan's Island must comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island and must specifically be approved by the board or committee that has responsibility for approving design guidelines. (Article XII, Design Review Board, Section 21-111);
>
> (b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island before the board or committee has approved the design of the school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.
>
> ALTERNATIVE
>
> Section 1-5 (a-b): PROVISIONS
>
> (a) The Town of Sullivan's Island shall not enter into any agreement or make any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school.

(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

18. On February 13, 2012, the Town filed a Complaint in Charleston County, C.A. No. 2012-CP-10-1060, against the Charleston County School Board and Islanders for a Smaller School that the Town alleged "is an unincorporated association of individuals who, upon information and belief, are organized and existing for the purpose of taking coordinated action in the public domain advancing their common agenda for the construction of a small school on the leased site described below, including conceiving, drafting, and circulating for execution" the Petition.

19. The Town's Complaint sought a declaratory judgment that the Petition was facially defective; that the Town had no legal obligation under the laws of the State of South Carolina to act on the Petition or submit the Initiated Ordinance to a referendum; that the Lease was duly entered and its terms could not be altered by the Initiated Ordinance; and that the only design review of CCSD's building plans for the new school are those set forth in the terms of the Lease.

20. The Town requested that residents who were members of Islanders for a Smaller School come forward and agree to accept service on behalf of the group. The few persons who came forward were willing to be named personally as defendants in the case but not to accept service for the organization. The Town did not amend the Complaint to add those few persons as individual defendants nor did it serve any of the persons who had identified themselves as acting on behalf of the organization in meetings or in the press .

21. Plaintiffs in this case - Martha Smith, Kathleen Post, and William Post, three of the signers of the Petition - filed this separate action on October 19, 2012. Plaintiffs seek a declaratory judgment that the Town failed to comply with South Carolina law by not placing the Initiated Ordinance on the election ballot and for an injunction requiring the Town to either adopt the Initiated Ordinance or hold a public referendum. Additionally, Plaintiffs amended their Complaint to assert a second cause of action that alleges that the Town deprived them of their right to vote and other rights under 42 U.S.C. § 1983.

22. In its defenses in its Answer in this action the Town alleges, among other things, that the Initiated Ordinance is moot and is legally invalid for the several reasons that were alleged in the action the Town initiated in February 2012.

23. On April 23, 2013, six months after this case was filed, the Town voluntarily dismissed its prior lawsuit, C.A. No. 2012-CP-10-1060, without prejudice

24. As a result of comments at the Town's public meetings on the design of the new School, CCSD's architect made numerous revisions to the design.

25. Town Council approved the design of the new School before CCSD was allowed to commence construction, as specified in the Lease.

26. Construction work commenced in early 2013 and has been ongoing. At the time of trial, the $20,000,000+ facility was at least 75% completed and expected to be finished and open in time for the school year beginning in August 2014.

CONCLUSIONS OF LAW

(1) The Initiated Ordinance is facially defective and, thus, not the proper subject of a public referendum.

The Initiated Ordinance was facially defective for the following five independent reasons, each addressed in detail below: (a) it seeks to control the design and size of the new school that

are both inherently within the Town's zoning authority; (b) it involves matters which are subject to a uniform statewide statutory scheme; (c) it involves the entry into a contract, an administrative matter; (d) it is incapable of performance since it is undisputed that CCSD would not have proceeded with the new School if the size were no greater than the original school; and (e) it mandates the Town violate civil law and breach a binding lease.

a. The Initiated Ordinance seeks to control the design and size of the new school, both of which are inherently within the Town's zoning authority.

The petitioners directed their Initiated Ordinance at the design and size of the new School. Both are zoning in nature and, therefore, not proper subjects for initiative and referendum in South Carolina.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code §§ 6-29-310 et seq., enables local governing bodies to adopt zoning ordinances including, but not limited to, ordinances regulating "the size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition, or removal in whole or in part of buildings and other structures..." and ordinances regulating "other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout this chapter." S.C. Code § 6-29-720 (A)(2) and (7). Under the enabling legislation local governing bodies are also specifically authorized to adopt ordinances providing for a board of architectural review. S.C. Code § 6-29-870.

Zoning matters are outside the category of matters subject to the initiative and referendum process set forth at S.C. Code §§5-17-10 et seq. See I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E. 2d 716 (S.C. 2000) (affirming the trail court's ruling that a zoning provision cannot be enacted by referendum). In the I'on case, the Court stated the following:

RMS/8

> The obvious incompatibility between the initiative and referendum process and the comprehensive [statutory zoning] provisions indicates the Legislature did not intend to allow voters to enact more complex zoning measures by initiative and referendum. Furthermore, the [statutory zoning] provisions enacted in 1994 address the matter of zoning in detail. We conclude the Legislature intended for this more specific and more recent enactment to take precedence over the general initiative and referendum process enacted thirty-seven years ago.

Id. at 415-16, 526 S.E.2d at 720-21 (agreeing with those courts that "have prohibited such initiatives and referenda, finding that the detailed nature of zoning acts indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts").

The Initiated Ordinance comes within this prohibition. Under the second alternative, no school could be built with more square footage than the previous building. The size of a school building is inherently a zoning issue. See I'on, at 414, 526 S.E.2d at 720 (noting that "[z]oning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare . . . Goals include the prevention of overcrowding of people, buildings, and traffic; the preservation of historic and ecologically sensitive areas; and the adequate provision of services to residents." (citing S.C. CODE § 6-29-710(A) (internal quotation omitted)); see also e.g., S.C. CODE § 6-29-720(A) (2) quoted above.

The first alternative in the Initiated Ordinance likewise concerns a zoning matter. It seeks to impose a method of design review. Included within the Town's Zoning Ordinance are ordinances establishing a Design Review Board ("DRB") to review and approve proposed construction on Sullivan's Island that is located within one of the zoning districts established by Ordinance. See TOSI Ordinances, Sec. 21-108 (DRB's powers limited to properties governed by the Zoning Ordinance); and see TOSI Ordinances Sec. 21-9 ("For the purpose of this Zoning Ordinance, the Town of Sullivan's Island is hereby divided into the following Zoning Districts. .

Rule 9

."); and TOSI Ordinances Sec. 21-10 (A) ("The regulations set by this Zoning Ordinance ***within each district*** shall be minimum standards and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.") (double emphasis added). See also, S.C. CODE §6-29-720 (Providing that a municipality's ". . . zoning ordinance shall create ***zoning districts*** of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter [and that] ***[w]ithin each district the governing body may regulate***....") (double emphasis added).

The School site does not fall under the DRB's purview because it is not located within a zoning district. See TOSI Official Zoning Map, and Sec. 21-4 (A) ("The Official Zoning Map is the official map depicting the boundaries of the above zoning districts of Sullivan's Island, South Carolina . . . [t]he Official Zoning Map, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Zoning Ordinance."). There is no zoning district for schools or public facilities and, as a result, no specific design standards that apply to the schools.

Plaintiffs put into evidence portions of the Town's Comprehensive Plan that concern the School site. However, comprehensive plans have no regulatory effect and do not constitute zoning. In Petersen v. Town of Clemson, 312 S.C. 162, 439 S.E.2d 317 (Ct. App. 1993), the Court of Appeals commented on this distinction:

> The plan does not establish the zoning for the property nor does it mandate the mixing of commercial and residential uses. It merely provides a general direction for considering future rezoning, which is a legislative process.

439 S.E.2d 322.

The Initiated Ordinance would have the impermissible effect of amending the zoning ordinances to grant the DRB authority to evaluate and approve the design of a building that is not

located within any of the five zoning districts. The Initiated Ordinance in essence seeks to zone School site leased to CCSD. The Enabling Act reserves zoning decisions to the local governing body – here, Town Council. Council addressed these design matters in the Lease, including size, that are intrinsically zoning in nature as it was entitled to do.

The Initiated Ordinance is fatally deficient since it seeks to bind Council on zoning matters that are beyond the purview of the statutes governing initiative and referendum. Ion, at 415-16, 526 S.E.2d at 720-21 ("the detailed nature of zoning acts indicates a legislative intent that zoning matters must be decided only in the manner specified in those acts" and are not appropriate for public referendum).

b. The Initiated Ordinance involves matters that are subject to uniform scheme or practice.

Under South Carolina law, "[m]unicipalities have no authority to set aside the structure and administration of any governmental service or function, the responsibility for which rests with the state government or which requires statewide uniformity." Town of Hilton Head, at 456, 415 S.E.2d at 805 (citing S.C. CONST. art. VIII. § 14). Any ordinance seeking to set aside the structure and administration of any governmental service or function requiring statewide uniformity would conflict with state law. See id.

In Town of Hilton Head, the Court determined that "the initiated ordinance [was] facially defective in its entirety because it set[] aside the structure and administration of the statewide highway scheme by attempting to limit the authority granted to the SCDHPT to consider the collection of tolls as a method of financing the construction of state roads." Town of Hilton Head, at 456, 415 S.E.2d at 805. "The planning, construction, and financing of state roads is a governmental service which requires statewide uniformity" as provided for in South Carolina Code § 57-3-10–30. Id. The Court in Town of Hilton Head explained why such an ordinance is

not proper for referendum as follows: "When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid . . . [and] [a]n electorate has no greater power to legislate than the municipality itself . . . [therefore] [a]n initiated ordinance which is facially defective cannot be cured by adoption by the electorate. Id. (internal citation omitted).

In this case the Initiated Ordinance attempts to set aside the structure and administration of a statewide school scheme for the construction of schools. The South Carolina legislature has mandated that the State Board of Education establish a statewide scheme to govern the building of school facilities and approve all plans for public schools. See, S.C. CODE § 59-23-210.[1] Pursuant to that statutory authority, the Office of School Facilities of the South Carolina Department of Education has promulgated guidelines as minimum standards for the construction and design of public schools and published them in a document entitled "South Carolina School Facilities Planning and Construction Guide." Under S.C. Code § 59-23-210 (A), the School's design and construction was required to conform to the provisions of the South Carolina School Facilities Planning and Construction Guide. Section 13 of the Lease incorporated this requirement in specifying that CCSD and the Department of Education "shall approve all plans and inspect all construction in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide...."

[1] S.C. Code § 59-23-210 (A) and (B) provide, in pertinent part, as follows: "(A) All construction, improvement, and renovation of public school buildings and property on or after the effective date of this section shall comply with the latest applicable standards and specifications set forth in the South Carolina School Facilities Planning and Construction Guide as published by the South Carolina Department of Education.... (B) All construction, improvement, and renovation of public school buildings and property on or after the effective date of this section must have plans and specifications submitted to the State Superintendent of Education or the superintendent's designee. Approval of the plans and specifications by the State Superintendent of Education or the superintendent's designee must be received before public bidding before the construction can begin...."

The Initiated Ordinance intrudes into design and construction considerations that are exclusively within the authority of the State Board of Education in the exercise of the mandate of the General Assembly to establish, promulgate, and enforce statewide standards. Just as the proposed initiated ordinance in Town of Hilton Head impermissibly sought to set aside the statewide statutory scheme of SCDHPT, the Initiated ordinance in this case seeks to set aside the statewide scheme of the Department of Education. See Town of Hilton Head, at 456, 415 S.E.2d at 805 ("the initiated ordinance [was] facially defective in its entirety because it set[] aside the structure and administration of the statewide highway scheme by attempting to limit the authority granted to the SCDHPT to consider the collection of tolls as a method of financing the construction of state roads."). Therefore, the Initiated Ordinance was facially defective for this additional reason, and the Town was under no obligation to hold a referendum on the Initiated Ordinance. See Town of Hilton Head, at 456, 415 S.E.2d at 805.

The Initiated Ordinance also seeks to override the structure and administration of the countywide school building standards by attempting to limit the authority of CCSD to determine the parameters for the construction of its schools in Charleston County. CCSD applies a written county-wide set of standards titled "Charleston County School District Elementary Education Facilities Specifications 3.0." To accomplish economies of scale, CCSD also has a practice that it will not build any new freestanding elementary school for a capacity of less than 500 students. The Initiated Ordinance seeks to displace these countywide requirements of CCSD for new elementary schools that it pays for, constructs, operates, and maintains.

Although the particular holding in Town of Hilton Head was limited to statewide schemes, the same principles and policy reasons would apply to countywide standards and practices of a local school district with respect to the construction of its new schools. However,

because the Court finds and concludes the Initiated Ordinance was facially invalid for violating a statewide scheme implemented by the General Assembly, the Court need not reach the question of whether the state supreme court's holding in Town of Hilton Head would encompass the countywide practices and policies of CCSD in this case.

c. The Initiated Ordinance involves the entry into a contract, an administrative matter.

"Only legislative questions may be referred to a vote of the people." Town of Hilton Head Island, at 457, 415 S.E.2d at 806 (citing State ex rel. Boynton v. Charles, 136 Kan. 875, 18 P.2d 149 (1933)). "An administrative measure is an enactment which puts into execution previously declared policies or previously enacted laws." Id. The Initiated Ordinance plainly intruded on the Town's administrative decisions. It sought to dictate certain terms of the Lease and instructed Town Council to breach the Lease if the new building was larger than the original one.

Whether a Town should enter a contract and the terms of that contract is an administrative decision, rather than the enactment of permanent legislation. Courts considering this question have reached this same conclusion. In particular, the Supreme Court of Colorado held that the adoption of an amendment of a lease of municipal property is an administrative function that it is *not* the proper subject of a public referendum. See Witcher v. Canon City, 716 P.2d 445, 450 (Colo. 1986). As the court succinctly stated in Witcher:

> ***The question of approval of the specific terms and conditions of the lease is not a matter of public policy. The negotiation of the leases and the amendments thereto are administrative acts. . . .***
>
> Witcher, 716 P.2d at 450 (double emphasis added).

See, also, City of Idaho Springs v. Blackwell, 731 P.2d 1250, 1254 (Colo. 1987) (the choice of location and structure for a new city hall is administrative).

Because the Initiated Ordinance sought to curtail and overrule administrative actions of Council, the Petition was facially defective for this additional, alternative reasons, and the Town was not required to adopt the Initiated Ordinance or put it on an election ballot.

d. The Initiated Ordinance is incapable of performance.

The Initiated Ordinance is incapable of performance seeking to do something that is neither possible nor feasible.

It is undisputed that CCSD was not going to proceed with the new School facility if its size were no greater than the original school. In the numerous "whereas" clauses of the Initiated Ordinance, the signers of the Petition profess to emphatically support the rebuilding of an elementary school on Sullivan's Island. Yet, the Initiated Ordinance's second alternative provision seeks to prohibit the construction of a new building with more square footage than the first one.

The Court finds and concludes that a new elementary school that meets the statewide and countywide standards previously discussed must necessarily be larger than the elementary school built in 1954 that had already outgrown its building at the time it was closed and vacated. CCSD was not going to proceed with the new facility unless it was designed and constructed for at least 500 students. Council unanimously passed a resolution in favor of a new school building for up to 500 students in May 2011.

Petitioners possess no right to obtain a vote to enact invalid legislation; a court "should not compel the doing of a vain thing and the useless spending of money." Town of Hilton Head, 415 S.E.2d 806. The Initiated Ordinance sought a vain and impossible act and was facially defective for this additional reason as well.

e. The Initiated Ordinance mandates the Town violate civil law and breach a binding lease.

The Initiated Ordinance mandates the Town violate civil law by breaching a binding contract—the Lease duly entered into by the Town and CCSD. The Lease's terms are specific and contemplate a school of a particular size and provide for an extensive design review process. Lease, ¶¶ 10-16. Either of the two of the alternative provisions of the Initiated Ordinance would have required the Town to breach the terms of Lease related to size and the design review process, in violation of civil contract law. Therefore, the Initiated Ordinance was facially defective for this additional reason, and the Town had no obligation to adopt the Initiated Ordinance of place it on an election ballot.

(2) The Court, not Council, renders the ultimate determination of whether a proposed initiated ordinance is facially defective.

In Town of Hilton Head our state supreme court ruled that the final determination of the legal validity of an initiated ordinance rests with the courts: "We emphasize that these are findings [of facial invalidity] which can be made pursuant to judicial inquiry only, and that a municipality has no power to pass on the validity of an initiated ordinance; a declaratory judgment action is the appropriate method by which a municipality may seek pre-election review of an initiated ordinance." 415 S.E.2d 806.

Here, the Town received the Petition; the Town sent the Petition to Charleston County Board of Elections and Voter Registration; and the Charleston County Board of Elections and Voter Registration certified the Petition as being signed by more than 15% of the qualified electors of the Town as of the last regular municipal election. Members of Town Council came to their own conclusions whether the Initiated Ordinance was facial invalid. Council then had the Town file the first declaratory judgment action, C. A, No. 2012-CP-10-1060, seeking a judicial

declaration that the Initiated Ordinance was legally invalid and that Council was not required to adopt it nor to conduct a referendum.

Plaintiffs argue that somehow their rights were violated when the Town did not proceed to serve and prosecute its declaratory judgment action until conclusion. Putting aside that Plaintiffs, as individual petitioners, have no "right" to force council to adopt a facially invalid initiated ordinance or to force it to conduct a referendum on it, their separate suit now before the Court seeks a declaratory judgment and other relief that requires judicial findings of the facial validity of the Initiated Ordinance. The Town violated no rights in not proceeding to judgment in its case and in dismissing its action eight months after this case was filed. This second action joins the same issues and results in a judicial determination of the validity of the proposed ordinance, in keeping with the process espoused by our state supreme court in Town of Hilton Head.

A town council necessarily must review and assess an initiated ordinance to decide what action to take, including whether to initiate litigation to seek a final, binding judicial determination of its validity, as it did in this instance. The Town is not contending that any determinations by its members are binding on this Court nor entitled to judicial deference. Our state supreme court in Town of Hilton Head did not prohibit such initial consideration of validity by a town council when it reposed in the courts the authority to make the ultimate findings on validity.

The Town's actions were in keeping with the various holdings of our state supreme court in Town of Hilton Head.

RvdS/17

(3) Plaintiffs have no right under South Carolina law to have Town Council adopt or hold a referendum on their Initiated Ordinance that is facially invalid.

The statutes providing for initiative and referendum, as applied by our state supreme court, do not create a right in a petitioner to have a municipality proceed to adopt or conduct a referendum on a facially invalid initiated ordinance.

South Carolina Code section 5-17-10 provides that "[t]he electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes [provided that any] initiated ordinance [is] submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

South Carolina Code section 5-17-30 provides that "[i]f the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor . . . , the adoption . . . of the ordinance concerned shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon."

Even though these statutes contain no express exclusions, our supreme court has determined that a municipality is under no obligation to adopt or place a facially defective ordinance on a ballot. Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 456, 415 S.E.2d 801, 806 (S.C. 1992) ("Because the initiated ordinance is facially defective in its entirety, we find that the Town has no obligation to place the initiated ordinance on the ballot"). This is because citizens "possess no right to obtain a vote to enact invalid legislation." Id. (citing Utz v. City of Newport, 252 S.W.2d 434 (Ky. 1952)).

Since Plaintiffs possessed no right to obtain a vote to enact invalid legislation, the Town did not violate any of their alleged rights under the South Carolina's initiative and referendum statutes.

(4) The right to vote is not implicated, and Plaintiffs have not proven that the Town violated any of their State or Federal Constitutional rights.

In addition to their claim that the Initiated Ordinance should have been submitted to referendum and that their rights were violated when the Town failed to do so, Plaintiffs brought a cause of action under 42 U.S. Code § 1983 asserting that the Town deprived them of their right to vote and their right to due process under the South Carolina and United States Constitutions.

The Fourth Circuit Court of Appeals has squarely decided this issue against Plaintiffs and ruled that state law authorizing voters to initiate legislation does not implicate the fundamental right to vote. In Kendall v. Balcerzak, 650 F.3d 515, 522 (4th Cir. 2011), the Fourth Circuit addressed whether a group of citizens' right to initiate a petition for referendum can implicate the right to vote such that a plaintiff can maintain and action pursuant to section 1983 for an alleged failure of the government to hold a referendum on an initiated ordinance. In that case, a unanimous panel of the Fourth Circuit Court of Appeals affirmed the lower court's determination that the right to vote is not implicated when a group of citizens seeks to have a particular issue submitted to referendum. Id. ("We agree with the district court's conclusion that there is no fundamental right to initiate legislation as there is a fundamental right to vote."). The court went on to explain as follows:

> ***This case is not a right to vote case.*** We find the case of Taxpayers United v. Austin, 994 F.2d 291, 296 (6th Cir.1993), to be instructive on this issue. As summarized above, in Taxpayers United, the Sixth Circuit Court of Appeals held that Michigan's procedures for checking signatures on initiative petitions did not deny voters' right to vote, as signing a petition to initiate legislation was not entitled to the same protection as exercising the right to vote. As in Taxpayers United, in this case, Kendall ***does not cite to us nor does our research identify any decision of the Supreme Court holding that signing a petition to initiate legislation is entitled to the same protection as exercising the right to vote.***
>
> The basis for distinguishing the right to vote in a representative election, on the one hand, from the right to petition for referendum and initiative, on the other, is a sound one. The referendum is a form of direct democracy and is not compelled by the Federal Constitution. See Doe v. Reed, 561 U.S. 186, 130 S.Ct. 2811, 2817, 177 L.Ed.2d 493 (2010) (Sotomayor, J., concurring); Kelly v. Macon–Bibb Cnty. Bd. of Elections, 608 F.Supp. 1036, 1038 (M.D. Ga. 1985).

Kendall, at 523 (4th Cir. 2011) (double emphasis added).

Furthermore, as just discussed, with respect to the right to petition for referendum and initiative, there is no right under South Carolina law to compel a municipality to adopt or conduct a referendum on an initiated ordinance that is legally invalid on its face.

With respect to the other rights Plaintiffs allege were violated in their Amended Complaint, the Court finds that those claims fail as well. The Town did not violate any state law (as discussed in detail above); no fundamental federal right is implicated in the right to initiate legislation; the legislation they sought to initiate was facially invalid; Plaintiffs were not deprived of a property or liberty interest that would sustain a claim for violation of substantive due process; and Plaintiffs were not deprived of procedural due process because this lawsuit has afforded them all the procedural rights afforded to any party to litigate the issues before the Court.

The Court has fully considered all the claims, arguments, and positions of Plaintiffs contained in their filings, including their Pretrial Brief, including those stated on the record during trial. Any particular argument advanced by Plaintiffs not specifically addressed herein

has been considered and rejected. No motion to alter or amend shall be necessary to protect and preserve any grounds of Plaintiff previously presented to the Court.

Therefore, based upon the forgoing findings of facts and conclusions of law the Court renders the following Judgment:

(1) The Plaintiffs' request for a declaration that the Town failed to comply with the law of the State of South Carolina is **DENIED** and it is **DECLARED** that the Initiated Ordinance was facially invalid for the multiple reasons discussed, that the Town had no obligation to adopt the Initiated Ordinance or to conduct a referendum, that Town did not violate any rights of Plaintiffs, and that the Town is entitled to judgment in its favor on Plaintiffs' first cause of action;

(2) It is further **DECLARED** that the Town did not deprive the Plaintiffs of any state or federal constitutional right, including the right to vote, right to participate in local government, right to procedural due process, or the right to substantive due process; and that the Town is entitled to judgment in its favor on Plaintiffs' second cause of action under 42 U.S.C. §1983;

(3) The Plaintiffs' request for an Order of the Court or writ of Mandamus directing the Town to adopt the Initiated Ordinance or hold a public referendum is **DENIED**.

(4) The Plaintiffs request for an award of cost and attorneys' fees pursuant to 42 U.S.C. § 1988; S.C. CODE § 15-53-100; or other statute or legal precedent is **DENIED**.

AND IT IS SO ORDERED.

June 6, 2014
Charleston, S.C.

R. Markley Dennis, Jr.
Circuit Court Judge

RMD/22

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-10-6830

FILED
2014 SEP -5 AM 10:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,

PLAINTIFFS,

TOWN OF SULLIVAN'S ISLAND,

DEFENDANT.

ORDER

This matter comes before me upon Motion for Reconsideration filed by Plaintiffs, MARTHA SMITH, KATHLEEN POST and WILLIAM POST. Based on the pleadings, submissions and memorandums in this matter, the Motion for Reconsideration is denied without oral argument;

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

August 26, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,)
Plaintiff(s))
)
vs.)
)
TOWN OF SULLIVAN'S ISLAND)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 10- 0830

Submitted By: J. Rutledge Young, III
Address: Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

SC Bar #: 16247
Telephone #: 843-720-2044
Fax #: 843-720-2047
Other:
E-mail: ryoung@duffyandyoung.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: J. Rutledge Young **Date:** 10/19/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-10-_____

MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,

Plaintiffs,

v.

TOWN OF SULLIVAN'S ISLAND,

Defendant,

FILED
2012 OCT 19 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WRIT OF SUMMONS
(NON-JURY)

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to said Complaint on the subscribers at their offices, DUFFY & YOUNG, LLC, 96 Broad Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default to be rendered against you for the relief demanded in the Complaint.

J. Rutledge Young, III
ryoung@duffyandyoung.com
Lee Anne Walters
lwalters@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Plaintiffs

October 19, 2012
Charleston, SC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-10-_____

MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,

Plaintiffs,

v.

TOWN OF SULLIVAN'S ISLAND,

Defendant,

COMPLAINT
(NON-JURY)

FILED
2012 OCT 19 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COME NOW Plaintiffs, Martha Smith ("Smith"), Kathleen Post ("K. Post"), and William Post ("W. Post") and allege and say:

PARTIES AND JURISDICTION

1. The Plaintiffs are citizens and residents of Sullivan's Island, South Carolina and registered to vote there.

2. The Defendant Town of Sullivan's Island (the "Town") is a municipal corporation organized and existing under the laws of the State of South Carolina.

3. This Court has jurisdiction over the subject matter of this action.

4. Venue is proper in Charleston County under S.C. Code § 15-7-30.

MATERIAL FACTS

5. This action is brought pursuant to Section 15-53-10, et seq., of the South Carolina Code of Laws, 1976, as amended, known as the "Uniform Declaratory Judgments Act."

6. In early October 2011, Plaintiffs and other Sullivan's Island voters signed the Petition attached hereto as Exhibit A.

7. On or about October 10, 2011, the Petition attached as Exhibit A was presented to the Town administrator and was also presented to the Board of Elections.

8. On or about October 18, 2011, the Charleston County Election Commission certified the Petition attached hereto as Exhibit A, and the Petition was submitted to the Sullivan's Island Town Council at a regular meeting.

9. The Plaintiffs complied in full with South Carolina's Initiative and Referendum Statue, which was made law by the South Carolina General Assembly and is codified at S.C. Code Ann. §§ 5-17-10 and 5-17-30.

10. S.C. Code § 5-17-10 gives voters the right to submit a proposed ordinance (except an ordinance appropriating money or authorizing the levy of taxes) to town council provided it is submitted by petition signed by at least fifteen (15) percent of registered voters and certified by the municipal election commission.

11. S.C. Code § 5-17-30 provides that if council does not pass the proposed ordinance submitted by petition or passes it in a substantially different form, then the proposed ordinance must be submitted to the voters in an election within one year.

12. The Petition referenced herein does not 1) appropriate money or 2) levy taxes.

13. The Petition referenced herein is signed by more than 15% of the registered voters on Sullivan's Island.

14. More than a year has passed since Sullivan's Island Town Council rejected the proposed ordinance, and no election on the proposed ordinance has been held.

15. The Sullivan's Island Town Council has neither 1) adopted the Petition referenced herein nor 2) held a public vote on the Petition referenced herein either of which is required by S.C. Code Ann. § 5-17-30.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

16. Plaintiffs incorporate by reference the allegations in the foregoing paragraphs as if fully set forth herein.

17. A party whose rights, status or other legal relations are affected by a statute or municipal ordinance may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder. S.C. Code Ann. §15-53-30.

18. A real controversy exists between the parties in which the parties have a legal and actual interest that is ripe for resolution.

19. The Plaintiffs have standing to bring the present case.

20. The Sullivan's Island Town Council has declared the Petition referenced herein to be "invalid", "moot", or otherwise improper.

21. A concrete issue is present and the Plaintiffs assert a positive legal duty, which has been denied by the Town.

22. The Plaintiffs have no adequate remedy at law as the present case involves their rights to participate in local government in the manner prescribed by South Carolina law.

23. The Plaintiffs have suffered irreparable harm in that the Town of Sullivan's Island has unfairly and unreasonably suppressed the Plaintiff's rights to participate in local government in the manner prescribed by South Carolina law.

24. As set forth by the South Carolina Supreme Court in the case of Town of Hilton Head v. Coalition of Expressway Opponents[1], municipal governments like the Town Council of Sullivan's Island lack the discretion or authority to reject the Petition referenced herein.

25. Through its conduct as set forth herein the Sullivan's Island Town Council has deprived the Plaintiffs of their right to participate in their local government in the manner prescribed by South Carolina law.

26. The Plaintiffs seek a declaration that the Defendant has failed to comply with the law of South Carolina as set forth herein.

27. The Plaintiffs seek injunctive relief in the form of an Order of the Court or Writ of Mandamus directing the Town of Sullivan's Island to 1) adopt the proposed ordinance or 2) hold a public referendum as required by the law of South Carolina.

28. The Plaintiffs seek such further and other relief as may be just, proper, or appropriate to those matters brought before this Court.

J. Rutledge Young, III
ryoung@duffyandyoung.com
Lee Anne Walters
lwalters@duffyandyoung.com
DUFFY & YOUNG, LLC
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Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Plaintiffs

October 19, 2012
Charleston, SC

[1] The Supreme Court of South Carolina has stated as follows: "We emphasize that these are findings which can be made pursuant to judicial inquiry only, and that a municipality has no power to pass on the validity of an initiated ordinance; a declaratory judgment action is the appropriate method by which a municipality may seek pre-election review of an initiated ordinance." Town of Hilton Head Island v. Coal. of Expressway Opponents, 307 S.C. 449, 458, 415 S.E.2d 801, 806 (1992).

EXHIBIT A

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

Pursuant to S.C. Code Ann. § 5-17-10, we, the undersigned, as registered voters on Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope, and type for our historic and environmentally sensitive, residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education, and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island elementary School, As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in, or about the present location of the SIES.

This goal of this petition is to gather the required number of signatures for the submittal of this ordinance to the Town Council. Pursuant to S.C. Code Ann. § 5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it final vote thereon.

AGREED UPON BY THE FOLLOWING PEOPLE, who have personally signed this petition, are registered voters of the state of South Carolina and Charleston County, and who have listed their registered voting address after their name.

Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

Page

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	DAVID SPURGIN	10/8/11	2668 JASPER BLVD.
Donna Molony	Donna Molony	10/4/11	2614 IDA AVE
Kelly Molony	KELLY MOLONY CL	10/7/11	2614 Ida Ave
Helen E Sloan	Helen Sloan	10/8/11	1505 Middle St
	ANDREW JELCER	10/8/11	1505 Middle ST.
James Cooper	Jane s Cooper	10/8/11	1808 Middle St
	JOHN HUGHES COOPER	10-8-11	1808, MIDDLE ST.
Carol Antman	CAROL ANTMAN	10-8	1714 ATLANTIC
Ann Mithoefer	Ann Mithoefer	10-8	407 oneil st.
Michael Mithoefer	MICHAEL MITHOEFER	10/8/11	407 ONEIL ST ST.
Mary Gress	Mary Gress	10/9/11	2608 Middle St.
Marc Antman	MARC ANTMAN		1714 ATLANTIC
Helen N Antman	HELEN N. ANTMAN	10/9/11	1709 MIDDLE ST SL
Peter Coish	Peter G. COISH	10/9/11	1808 Ida Avenue

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	KATHLEEN POST	10/2/11	1907 I'ON AVE.
	WILLIAM POST JR	10/2/11	1907 I'ON AVE.
	F. JUSTINE POST	10/2/11	1907 I'ON AVE.
	CECELIA POST	10/2/11	1907 I'ON AVE.
	Robert B. Varn Sr.	10-7-11	1612 Atlantic Ave.
	FRANCES VARN	10-7-11	1612 Atlantic Ave.
	H. WAYNE HILLS	10-7-11	1418 THOMPSON AVE.
	W J WOOD JR	10/7/11	1402 Thompson Ave
	E E WOOD	10/7/11	1402 Thompson Ave
	CAROLINE WOOD	10/7/11	1402 Thompson Ave
	ELLEN THURMAN	10/4/11	401 Thompson Ave,
	Lynn Dettyens	10/7/11	3009 Middle St.
	WILLIAM L. WOOD	10/7/11	1454 THOMPSON
	Edith Beckham	10/7/11	1434 Ave, Isle of Palms
	Betty Harmon	10/7/11	1730 Middle St.
	Michael G. Bean	10/8/11	1738 MIDDLE ST.
	Robert P. Thompson	10/8/11	2917 Jon Sull. Ct.
	Lisa Crow	10/8/11	2508 Im Ave, Sull Is.
	Virginia Runyon	10/3/11	2923 JON AVE Sull Isl.

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary: Katherine A Kenyon Commission Expires 04-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	E A Scarda III	10/3/11	2102 Atlantic Ave
	Ann H. Graham	10/3/11	2102B Ion Ave
J. Marshall Stith	J. MARSHALL STITH	10/3/11	45 Station 22 Street
Jessamyn Jacobs	Jessamyn Jacobs	10/3/11	415 Station 22 St
	E I CONDON	10/3/11	2201 ION AVE
Carolyn Scarda	CAROLYN SCARDA	10/3/11	2102 Atlantic
Robert F Graham Jr	Robert F Graham Sr	10/3/11	2118 Ion AVE
Anne L Graham	Anne L. Graham	10/3/11	2118 Ion Ave.
Nathaniel H Robb	Nathaniel H. Robb, JR	10/3/11	2209 Atlantic Ave
June Fischer	JUNE FISCHER	10-5-11	2216 Jamaica Blvd.
Leo Fette	Leo Fette	10/5/11	2668 Middle St
J.E. Fore	J.E. FORE	10/5/11	2007 20th St.
Martha Igoe	MARTHA IGOE	10/5/11	403 Sta 13 ST
Roger Igoe	Roger Igoe	10/5/11	4035ta 13 St
Mary Meehan	Mary Meehan	10/6/11	411 Sta 13 St
William G. Meehan	William G. Meehan	10/5/11	411 Sta. 13rd St.
Martha Funk	MARTHA FUNK	10/5/11	411 Sta. 13 St
~~Doris Lancaster~~	~~1302 Thompson Ave~~	~~10-5-11~~	
Doris Lancaster	DORIS LANCASTER	10-5-11	1302 Thompson Ave
Robert Lancaster	Robert LANCASTER	10-5-11	1302 Thompson Ave
Eugene S Blanchard	Eugene S Blanchard	10-5-11	1305 Thompson Ave.
June Blanchard	June Blanchard	10-5-11	1305 Thompson Ave
Nicholas F Murphy	NICHOLAS MURPHY	10-5-11	131 11th Ocean Ave
Ann H. Gay	Ann H. Gay	10/5/11	848 Middle St.
	Charles Gay, Jr	10/5/11	"
Richard A Graham	RICHARD A GRAHAM	10/5/11	2102 ION AVE
M K Bailey	Mel R Bailey	10/7/11	829 Middle St
B N Bailey	B N Bailey	10/7/11	829 Middle St
	Wallace Bailey	10/7/11	2068 ION
	HARTINE C HIERS	10/7/11	2714 Goldberg Ave ST
Mary R. Blanchard	Mary R. BLANchard	10/7/11	2002 Central St
Thomas E Kaisley Jr	Thomas E Kaisley Jr	10/7/11	2673 Ion Ave

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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CHARLESTON COUNTY South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Ellen L. Miller Commission Expires 8-12-12

Notary Public Seal:

ELLEN L. MILLER COM. EXP. NOTARY PUBLIC 08-12-2012 SOUTH CAROLINA

John A. Rekus
PETIONER

Page _____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Susan D. Robertson	Susan D. Robertson	10-7-11	1901 Ion Ave. Sullivan
Edward H. Robertson III	EDWARD H. ROBERTSON III	10-7-11	1901 Ion Ave Sullivan
Rosemary Thompson	Rosemary Thompson	10-9-11	2917 Ion Ave Sullivan
Lynnie Harper	Lynnie Harper	10-9-11	1325 Middle St.
Sarah Harper Díaz	Sarah Harper Díaz	10/9/11	1317 Middle St.
FRANK HARPER	FRANK HARPER	10/9/11	1325 Middle St.
Daniel Harper	Daniel Harper		

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
John A. Jeffries	JOHN A. JEFFRIES	10/5/11	1615 POE AVE
Penn E. Jeffries	PENN E. JEFFRIES	10/5/11	1615 POE AVE
~~Patricia A. Ebel~~	~~PATRICIA A. EBEL~~	~~10/5/11~~	
P.A. Ebel	P.A. EBEL	10/5/11	1620 POE. AVE
Ann W. Ebel	ANN W. EBEL	10/6/11	1620 POE AVE
Vicki H. Rudd	Vicki H. Rudd	10/7/11	1617 Middle Street
Howard F. Rudd, Jr.	Howard F. Rudd, Jr.	10/7/11	1617 Middle Street
David Bloom	DAVID BLOOM	10/9/11	1658 Atlantic Ave
Sonja Bloom	SONJA BLOOM	10/9/11	1658 Atlantic Ave
Lori Lyles	Lori Lyles	10/9/11	1651 Atlantic Ave
Delores A. Schaeffer	Delores A. Schaeffer	10/9/11	1612 Poe Avenue
Mary J. Bitter	MARY J. BITTER	10/9/11	1750 Ocean Ave.
Wiggle Bitter	Wiggle Bitter	10/9/11	1750 Ocean Ave
Mike McEnery	MIKE MC ENERY	10-9	2301 Arctic Ave.
Dean Varner	Dean Varner	10-9	2262 Myrtle Ave.
Alexandra Varner	Alexandra D. Varner	10-9	2262 Myrtle Ave.

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(21)

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Page_____

Petitioner: Susan Poulnot

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	Lodene R Ad	10/5/2011	210 Sta 28½
	Courtney Adams	10/5/2011	" "
	KEITH MAXSY	10/5/2011	210 State 28½
	Michal Baird	10/5/2011	308 St. 9½
	Jim Brown	10/6/11	308 ST. 9½
	Tambra Darby	10/6/11	933 Middle St
	JEREMIAH CULLISON	10/6/11	1655 MIDDLE ST
	Anne Parker	10/6/11	14702 Ion Ave
	W. Scott Parker	10/6/11	1702 Ion
	Patrick K. Rutledge	10/6/11	1764 Atlantic
	Rochelle Rutledge	10/6/11	1764 Atl. Ave
	Richard K Spelman	10/5/11	2502 Middle St
	Francis C. Johnson	10/5/11	2402 Goldbug Ave
	Dicksie G Johnson	10/6/11	2402 Goldbug Ave
	Tammi Spelman	10/7/11	2502 Middle St
	Elizabeth Gregorie	10/7/11	2836 Harvey St
	Del Schutte	10-7-11	2926 Jasper
	Linda C. Schutte	10/7/11	2926 Jasper Blvd
	Sherry Coash	10/8/11	2808 Ion Ave
	Ron Coash	10/8/11	2808 ION AVE.
	Angelyn S. Avinger	10/9/11	2807 Marshall Blvd

Page_____

A PETITION TO RECONSIDER THE

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Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Karen Coste	Karen Coste	9.30.11	322 Station 19, 51
Charlotte Collias	Charlotte Collias	9-30-11	1908 Ion Ave
	Hal Coste	9/30/11	322 Sta. 19
Judy P. Nelson	JUDY P. NELSON	9/30/11	321 Sta 19
James E. Nelson	JAMES E. NELSON	9/30/11	321 STA. 19.
Clyde M. deBruce	Clyde M. deBruce	10/2/11	1903 Back St.
Sumter Fyfe Bruce	Sumter F. deBruce	10/2/11	1903 Back St
	James B. Nelson	10/2/11	321 Station 19
Bonnie A. Williams	Bonnie A. Williams	10/3/11	2513 Ion Avenue
Roy Williams	ROY WILLIAMS	10/3/11	2513 Ion Avenue
E.P. Chiola	E.P. CHIOLA	10/3/11	1616 Bde Ave
Eugene J West	Eugene J West	10/3/11	1714 Middle St
Linda C West	LINDA C WEST	10/03/11	1714 MIDDLE ST.
Milton Langley	MILTON LANGLEY	10/3/11	1618 Middle St.
Frannie Reese	Frannie Reese	10/3/11	305 Station 20
Raye Ann M. Osborne	Raye Ann M. Osborne	10/3/11	1801 ATLANTIC AVE.
	Adam Pearlman	10/3/11	3010 Middle St
Caroline S Osborne	Caroline S Osborne	10/3/11	1801 Atlantic Ave
Robert Cookson	ROBERT COOKSON	10-3	2513 I'On Ave
Lynn Rutledge	Lynn Rutledge	10-3	2014 Central Ave
Carter Lupton	Carter Lupton	10-4-11	2829 Marshall Blvd
	Fred Wszolek	10/4/11	3014 Ion Avenue
	Carol Killough	10/4/11	1813 Back Street
	Billy K. Hall	10/4/11	1813 Back St
Nancy Havens	Nancy Havens	10/4/11	1746 Thompson Ave
	Peter Langston	10/4/11	1618 Middle St
Linda Neyle	Linda Neyle	10-5-11	2630 Middle St.
Ethel Fortenberry	ETHEL FORTENBERRY	10.5.11	2408 Myrtle Ave
Joanne Winchester	Joanne Winchester	10.5.11	2720 Brooks ST
John Winchester	John Winchester	10.5.11	2720 Brooks ST
	Sherry Jo G Jones	10/5/11	2529 Atlantic Ave
Norwood L. Smoak	NORWOOD L. SMOAK	10/5/11	2607 Bayonne
Josephine H. Hutcheson	Josephine H. Hutcheson	10.5.11	2663 Bayonne St.
	CHARLES KARTZ	10/5/11	2820 Marshall Blvd
	SALLY GREER	10/5/11	2808 Atlantic
	Thomas R Silver	10/5/11	2830 Atlantic
Vivian C Scarbrough	Vivian Scarborough	10.5.11	2830 Atlantic

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Amanda Jacob	Amanda Jacob	10/5/11	2814 Ion Ave.
Ann C. Fuller	Ann C. Fuller	10/5/11	2814 Atlantic Ave.
William F. Fuller	William F. Fuller	10/5/11	"
Sheila Kuritz	Sheila Kuritz	10/5/11	2678 Jasper Blvd
Barbara Flaherty	BARBARA Flaherty	10/6/11	2208 Atlantic Ave.
Stephanie Aston-Jones	Stephanie Aston-Jones	10/6/11	2624 Ion Ave.
Michael C Ralston	MICHAEL C RALSTON	10/6/11	2629 Ion ave
Helen Roderick	Helen Roderick	10/6/11	2723 Bayonne St.
Kat Kenyon	Kat Kenyon	10/6/11	2804 Marshall
Joseph Wezwich	JOSEPH WEZWICH	10-6-11	3024 Marshall
Eloise Bradham	Eloise Bradham	10/6/11	3109 Ion Ave
Gary R. Visser	GARY R. VISSER	10/6/11	2924 Middle St
Elizabeth Bivens	Dr. Elizabeth Bivens	10/6/11	2404 Middle St
Margaret Marcinski	MARGARET MARCINSKI	10/6/11	2808 JASPER
James E. Marianski	JAMES MARIANSKI	"	"
W. Howard Hall	W. HOWARD HALL	10/7/11	1807 Ion AVE
Nancy C. Geckler	Nancy C. Geckler	10/7/11	1602 Atlantic Ave
Johnny Tate	Johnny Tate	10/07/11	1602 Atlantic Ave.
David T. Spell, Jr	DAVID T. SPELL, JR	10/7/11	1702 Atlantic Ave
John Roitzsch	John Roitzsch	10/7/11	1602 Poe
Pamella M Roitzsch	Pamella M Roitzsch	10/7/11	1602 Poe
Ellen Thurman	ELLEN Thurman	10/7/11	1401 Thompson Ave.
Nancy A. Siegling Fortiere	NANCY A. Siegling FORTIERE	10/8/11	1761 Atlantic Ave
David L. Fortiere	DAVID L. FORTIERE	10/8/11	1761 ATLANTIC AVE
Carroll L. Joyner	Carroll L. Joyner	10/8/11	1113 Middle St
Catherine Crawford	Catherine Crawford	10/5/11	927 Middle St
Jane Sheahan McLaughlin	JANE SHEAHAN McLAUGHLIN	10/8/11	840 ↓
Ray McLaughlin	RAY McLAUGHLIN	10-8-11	840 ↓
Michelle Lally	Michelle Lally	10-8-11	840
Elizabeth Biddle	Elizabeth Biddle	10/8/11	1026 Ocean Blvd.
Lydia Matthews	Lydia Matthews	10/8/11	405 Seabreeze Lane
Susan Kobbusky	Susan Kobbusky	10/8/11	402 Seabreeze Ln
V A Sorsen	V A Sorsen	10/8/11	401 Seabreeze Ln
De Daltorio	De Daltorio	10/8/11	401 Seabreeze Ln
Beth McLean	Beth McLean	10/8/11	1312 POE AVE
Ephraim Mike Carroll	EPHRAIM MIKE CARROLL	10/8/11	1308 Cove Avenue
Elizabeth Carroll	ELIZABETH CARROLL	10/8/11	1308 Cove Avenue

up.

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
[illegible]			
C Richardson	C RICHARDSON	10/10/11	2820 JASPER BLVD
Richardson	P RICHARDSON	10/10/11	2820 JASPER BLVD

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Arthur Smith	Arthur Smith	10-8-11	2803 Marshall Blvd
Julia Smith	Julia Smith	10-8-11	2803 Marshall Blvd
Dan Legare	Dan Legare	10/8/11	3104 Marshall Blvd
Gloria Legare	Gloria Legare	10/8/11	3104 Marshall Blvd.
Louis Yuhasz	Louis Yuhasz	10/8/11	3014 Ion Ave.
[illegible]	[illegible]	10/08-11	2735 Jasper
Helen Spell	Helen Spell	10/10/11	1712 Atlantic Ave
Jane R Galis	Jane R Galis	10/10/11	1817 Back St.
[illegible]	CONSTANTINE "CHUCK" GALIS	10/10/11	1817 Back St.

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KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Martha J. Smith

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Stephanie Smith	Stephanie Smith	10/3/11	1908 Thee St.
Fleming Harris	Fleming Harris	10/3/11	2901 Ion Ave
Kathleen Harris	Kathleen Harris	10/3/11	2901 Ion Ave
Lynne Hamontree	Lynne Hamontree	10/3/11	2871 Ion Ave
	Steven E Hamontree	10-3-11	2871 Ion Ave
Cynthia S Brown	Cynthia S Brown	10/3/11	2862 Ion Ave
Summer Coish	Summer Coish	10/3/11	2808 Ion Ave.
Kelly Messier	Kelly Messier	10/3/11	2770 Ion Ave.
Joe Botts	Joe Botts	10/3/11	2724 Ion Ave
Lorin Botts	Lorin Botts	10/3/11	2724 Ion Ave.
Alice Botts	ALICE BOTTS	10/3/11	2724 Ion Ave
Ferdinand Gregorie III	Ferdinand Gregorie III	10/3/11	410 Patriot St.
	Millie O'Shaughnessy	10/3/11	901 Middle St.
Susan Poulnot	Susan Poulnot	10/3/2011	2819 Marshall Blvd
David Poulnot	David Poulnot	10/3/2011	2819 Marshall Blvd
Martha B Gunter	Martha B Gunter	10/3/2011	2813 Marshall Blvd.
Barbara S Robinson	Barbara S Robinson	10/3/2011	2108 Pettigrew St
Leslie Robinson	Leslie Robinson	10/3/11	2108 Pettigrew St
David DeAntonio	DAVID DEANTONIO	10/3/11	2350 JASPER BLVD
Deborah Gregorie	Deborah G Gregorie	10/3/11	410 Patriot St.
Gay Coleman	Gay Coleman	10/4/11	1856 Thee St.
Stewart Coleman	Stewart Coleman	10/4/11	1856 Thee St.
Judith C Reese	Judith C. Reese	10/4/11	2209 Myrtle Ave.
Juanita T Byrum	Juanita T. Byrum	10/4/11	2018 Middle ST
Nancy J McConnell	NANCY J McCONNELL	10/4/11	2025 JASPER BLVD
Kay Park	KAY PARK	10/4/11	1918 Ion Ave
Helen C Smith	Helen C Smith	10/4/11	2250 Atlantic Ave.
Teri B England	Teri B. England	10/4/11	2014 Middle St
Patrick C Alderton	Patrick C Alderton	10/4/11	2507 Atlantic
Chery Alderton	Chery S. Alderton	10/4/11	2507 Atlantic
	Sarah Mae Alderton	10/4/11	2507 Atlantic
Eleanor P Daly	Eleanor P. Daly	10/4/11	2408 Raven Drive
Michael F Daly	Michael F Daly	10/4/11	2408 Raven Drive
Gina Schirmer	Gina Schirmer	10/4/11	1857 Flag St.
Sam Schirmer	SAM Schirmer	10/4/11	1857 Flag St
Louise Russell	Louise Russell	10/4/11	2057 Middle St.
~~Lynn D Detyens~~	~~Lynn D Detyens~~	~~10/5/11~~	~~3604 Middle Street~~

Dup

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Dup ~~W T Wood Jr~~	~~W T Wood Jr~~	~~10/5/11~~	~~1220 Thompson~~
Dup ~~E C Wood~~	~~E C Wood~~	~~10/5/11~~	~~1220 Thompson~~
Dup ~~Carolyn Wood~~	~~Carolyn Wood~~	~~10/5/11~~	~~1220 Thompson~~
Agetha Thomas	Agetha Thomas	10/5/11	1220 Cove
Dup ~~Walter J Wood Jr~~	~~Walter J Wood Jr~~	~~10/5/11~~	~~1220 Thompson Ave~~
George A. Detyens	George A. Detyens	10/5/11	3009 Middle St
Betty Driemeyer	Betty Driemeyer	10/5/11	2900 I'On Ave
Judy Bozeman	Judy Bozeman	10/5/11	3209 Middle St
Jerry Hagood	Jerry Hagood	10/5/11	2424 Raven Dr.
[redacted]	Timothy K. Jenkins	10/6/11	2830 Jasper Blvd.
[redacted]	Carolyn G. McGlynn	10/6/11	2850 Jasper Blvd
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
F. Daniel Batten	F. DANIEL BATTEN IV	10/6/11	2430 ATLANTIC
Susan G. Batten	SUSAN G BATTEN	10/6/11	2430 ATLANTIC
[redacted]	BJ McKissick	10/6/11	2864 BROWNELL AVE
[redacted]	Elizabeth Haskin	10/6/11	2864 Brownell Ave
Joseph M. Dunn	Joseph M Dunn	10/7/11	1401 MIDDLE ST
Patricia Batten	PATRICIA PATTERSON	10/7/11	2832 Middle St.
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
Judith K Veronen	Judith K Veronen	10/7/11	2807 Raven Dr.
John Holzworth	John Holzworth	10/7/11	2807 Raven
[redacted]	LENWOOD BRANCH	10/7/11	2424 Jasper Blvd
Sandra Branch	Sandra Branch	10/7/11	2430 Jasper Blvd
Clyde Timmons	Clyde Timmons	10/7/11	1413 Middle St
Carlin M. Timmons	Carlin Timmons	10/7/11	1413 Middle St
Jean Kablick	Jean Kablick	10/8/11	1850 I'on Ave.
[redacted]	GEORGE KABLICK	10/8/11	1850 I'on Ave
[redacted]	THOMAS SOMERS	10/8/11	2520 Myrtle Ave
Courtney Somers	Courtney Somers	10/8/11	2520 Myrtle Ave
[redacted]	Mark Thomas	10/8/11	2608 Atlantic Ave
[redacted]	Howard & Gloria Howard	10/10/11	1820 Chatham Ave.
Sandra R Tawes	Sandra R Tawes	10/10/11	2608 ATLANTIC AVE
George W. Tawes	GEORGE W. TAWES	10/10/11	2608 ATLANTIC AVE
[redacted]	Harold C. ENLOE	10/10/11	2220 I'on

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Caroline Messier	Caroline Messier	10/4.11	2730 Ion Ave.
	Jeffrey Simon	10.4.11	2730 Ion Ave
	ADAM SIMON	10.4.11	2730 Ion Ave
	Steven Messier	10/9/11	2730 Ion Ave

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
[illegible]	ELLISON SMITH IV	10/8/11	1908 Flag St V
Martha J. Smith	MARTHA J. SMITH	10/8/11	1908 Flag St. V
Marilyn Goldstein	MARILYN GOLDSTEIN	10/8/11	194 STATION 19
[illegible]	HERB GOLDSTEIN	10/8/11	194 STATION 19
[illegible]	[illegible]	10/8/11	ZUBA KAYAKS
Barbara P. Spell	Barbara P. Spell	10/8/11	1702 Atlantic Ave
[illegible]	Jennifer Angelino	10-9-11	2851 Middle St
[illegible]	MARK ANGELINO	10-9-11	2851 MIDDLE ST.
[illegible]	Robert B. Pearlman	10-9-11	3010 Middle St.
Cynthia Pearlman	Cynthia Pearlman	10-9-11	3010 Middle St
Martha DeLuca	Martha DeLuca	10-9-11	2858 Middle St.
[illegible]	Christine Rikard	10/9/11	2820 Jasper
Diane R. Cartledge	Diane R. Cartledge	10/9/11	2656 Jasper
[illegible]	JEANNE SMITH	10/9/11	1719 ATLANTIC
J. Addison Ingle	J. Addison Ingle	10/9/11	1719 Atlantic Ave

ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

TOWN OF SULLIVAN'S ISLAND
COUNTY OF CHARLESTON, SOUTH CAROLINA

ORDINANCE NO._____

Adopted, _____Day of_____2011
Effective, _____Day of_____2011

SECTION 1-1: SHORT TITLE

This ordinance shall be known as: ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

SECTION 1-2: PURPOSE

1) TO PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO HEAR, EVALUATE, CONSIDER, AND COMMENT UPON THE CURRENTLY PROPOSED CONSTRUCTION PLAN OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL;
2) TO MANDATE THE COLLECTION OF PUBLIC COMMENTS IN AN OPEN FORUM;
3) TO FOSTER COMPLIANCE WITH STATE AND FEDERAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
4) TO FOSTER COMPLIANCE WITH LOCAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
5) AND FOR OTHER PURPOSES, AS ALLOWED BY LAW.

SECTION 1-3: ENACTING CLAUSES

WHEREAS, S.C. Code Ann. § 5-17-10 and § 5-17-30 (1976 & Supp. 1998) provides procedures for concerned citizens to introduce local ordinances, and request a referendum on said ordinances, in matters such as the construction of a public elementary school;

WHEREAS, it has been determined that any proposed school on Sullivan's Island should comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island (Article XII, Design Review Board, Section 21-111);

WHEREAS, the impact of the proposed school building project has not been fully evaluated, including, but not limited, to specific concerns regarding, water, sewage, traffic/parking, environmental and storm-water drainage issues;

WHEREAS, the registered voters of Sullivan's Island have not been fully informed of the results of previous evaluations;

WHEREAS, Sullivan's Island residents desire full due process and crave an opportunity for input at a public hearing, and said residents further desire to be heard in full transparency on this issue regarding public monies and public education;

WHEREAS, the magnitude of the currently proposed project poses numerous, potential, impacts to the historic and environmentally sensitive residential community of Sullivan's Island;

WHEREAS, the sponsors of this ordinance emphatically support the rebuilding of a public school at SIES, they also hold that this new school must be one of a more appropriate size, scope, and type for a historic and environmentally sensitive residential community;

WHEREAS, the afore-said project impacts are regulated by a myriad set of local, state, and federal laws which must be addressed in the public interest;

WHEREAS, all local ordinances on Sullivan's Island are deliberated and approved by the Town Council in a multi-step process with a first reading, a second reading, a third reading, and a final ratification at a regular Town Council Meeting;

WHEREAS, the duly elected governing authority of Sullivan's Island is the Sullivan's Island Town Council and the Mayor thereof;

WHEREAS, the Sullivan's Island Town Council provides approval for the construction of the Sullivan's Island Elementary School by virtue of being the duly elected governing authority;

NOW THEREORE, be it ordained that the Sullivan's Island Town Council adopts the following ordinance, with the following provisions:

Section 1-4: GENERAL PROVISIONS

Section 1-4(1) (a-i). Definitions.

For purposes of this Ordinance, the following definitions apply:

(a) 'School' means Sullivan's Island Elementary School, or SIES;
(b) 'County' means the County of Charleston;
(c) 'Council' means Sullivan's Island Town Council;
(d) 'Person' means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association;

(h) 'Public interest' refers to the beneficial and adverse impacts and effects of a project upon members of the general public;
(i) 'The public,' 'citizens,' or 'residents' refers to registered voters/residents of Charleston County.

Section 1-4 (a-f). Findings.

(a) This ordinance shall be liberally construed and applied to promote its underlying purposes and policies.
(b) If any provision of this ordinance, or the application thereof, is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.
(c) The intent of this ordinance is to enable the Town of Sullivan's Island, acting individually or in concert, to continue to preserve and enhance its present advantages, and to prevent or minimize such future problems as may be foreseen, specifically in regard to the construction of the SIES, as currently proposed.
(d) As the local government, the Town has a long history of adopting and enforcing appropriate land use controls, and cooperating with other governmental authorities.
(e) The provisions of this ordinance are declared to be necessary for the promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare of the residents of Sullivan's Island.
(f) The preamble to this ordinance is hereby incorporated into this ordinance as if set out fully herein.

Section 1-5 (a-b): PROVISIONS

(a) Any school built or rebuilt on Sullivan's Island must comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island and must specifically be approved by the board or committee that has responsibility for approving design guidelines. (Article XII, Design Review Board, Section 21-111);
(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island before the board or committee has approved the design of the school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

ALTERNATIVE

Section 1-5 (a-b): PROVISIONS

(a) The Town of Sullivan's Island shall not enter into any agreement or make any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school.

(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

Section 1-6: ORDINANCE ADOPTION

The Ordinance Book of Sullivan's Island in the County of Charleston is hereby amended by adopting on the ____ day of _____, 2011 this Ordinance, to be numbered _____.

This Ordinance shall be known as the ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

The effective date of this ordinance is the _____ day of _____, 2011.

SO ORDAINED by the Town Council of Sullivan's Island, this day.

ATTEST:

By _____
Clerk to the Town Council

Mayor _____

Sullivan's Island, Charleston County

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CIVIL ACTION NO.: 2012-CP-10-6830
)	
MARTHA SMITH, KATHLEEN POST,)	
AND WILLIAM POST,)	
)	
Plaintiffs,)	
)	**ANSWER**
v.)	
)	
TOWN OF SULLIVAN'S ISLAND,)	
)	
Defendants.)	
)	

Defendant, answering the Complaint herein, alleges and states as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Complaint not hereinafter admitted, qualified, or explained, is deemed denied.

1. The Defendant, Town of Sullivan's Island (the "Town" or the "Defendant") admits the allegations of paragraphs 1, 2, 3, and 4.
2. The allegations of paragraph 5 express a conclusion of law which the Town is required neither to admit nor deny.
3. As to the allegations of paragraph 6, the Town admits that it was presented with the petition attached as Exhibit A but lacks sufficient information and belief as to when all the signatories signed it.
4. The Town admits, upon information and belief, the allegations of paragraph 7.
5. The Town admits, upon information and belief, the allegations of paragraph 8.
6. The allegations of paragraph 9 express a conclusion of law which the Town is required neither to admit nor deny.

7. The allegations of paragraphs 10 and 11 express a conclusion of law which the Town is required neither to admit nor deny. The Town craves reference to the statutory sections mentioned and denies any allegations inconsistent therewith.
8. The Town admits the allegations of paragraph 12.
9. The Town admits, upon information and belief, the allegations of paragraph 13.
10. The Town admits the allegations of paragraph 14 and 15, further alleging that the matters set forth in the petition are not subject to initiative and referendum under the laws of South Carolina.
11. The Town realleges its previous allegations in response to the allegations realleged in paragraph 16.
12. The allegations of paragraph 17, 18, and 19 express a conclusion of law which the Town is required neither to admit nor deny.
13. The Town admits the allegations of paragraph 20.
14. As to the allegations of paragraph 21 the Town admits that the Town has asserted that it does not have a legal obligation to proceed with the referendum or adopt the proposed ordinance.
15. The allegations of paragraph 22 allege a conclusion of law which the Town is required to neither admit nor deny.
16. The Town denies the allegations of paragraph 23.
17. As to the allegations of paragraph 24, the Town craves reference to the opinion of the Supreme Court and denies any allegations inconsistent therewith.
18. The Town denies the allegations of paragraph 25.

19. As to the allegations of paragraphs 26 and 27, the Town admits the Plaintiffs seek a declaratory judgment and injunctive relief but deny that the Town has failed to comply with the law and deny that Plaintiffs are entitled to either injunctive relief or a writ of mandamus.

20. The allegations of paragraph 28 do not set forth factual or legal matters and do not require a response from the Town.

FOR A SECOND DEFENSE

21. The Town has no obligation to place the proposed initiated ordinance on a ballot for referendum nor to conduct the referendum since the proposed initiated ordinance relates to improper subjects for an initiated ordinance including administrative matters, zoning and land use matters, and matters subject to statutes and regulations that require state and/or county wide uniformity, and otherwise conflicts with state law.

FOR A THIRD DEFENSE

22. The Town has duly entered a lease with the Charleston County School District for the Sullivan's Island Elementary School site, copy attached as Exhibit 1 hereto.

23. The proposed initiated ordinance is invalid for the additional reason that it seeks to compel the Town to breach the lease which is contrary to and in violation of state law.

FOR A FOURTH DEFENSE

24. The proposed initiated ordinance is moot for several reasons, including on the ground that the lease requires that the design of the elementary school comply

with the Town's design guideline for neighborhood compatibility as stated in the adopted ordinances of the Town, and such design has been specifically reviewed and approved by Town Council which previously adopted those design guidelines as an ordinance and has responsibility for approving all codified design guidelines, and which is the appropriate body for approving such design of the new elementary school to be located on a site outside the purview of the Town's Design Review Board.

WHEREFORE, having fully answered the Complaint herein, the Defendant prays that the court enter its declaratory judgment that the Defendant has no legal obligation to proceed with a referendum and submit to the electorate the proposed initiated referendum, and for an award of its costs and such further and other relief as is just and proper.

PRATT-THOMAS WALKER, P.A.

BY: G. Trenholm Walker

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ldodds@doddsandhennessy.com

ATTORNEYS FOR DEFENDANT
TOWN OF SULLIVAN'S ISLAND

November 13, 2012

Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).
on this 13th day of November, 2012
Charleston, South Carolina

Yevette Y. Epps

EXHIBIT 1
TO ANSWER

STATE OF SOUTH CAROLINA)
) LEASE AGREEMENT
COUNTY OF CHARLESTON)

This Lease Agreement is made and entered into as of this 18th day of October, 2011 by and between the Town of Sullivan's Island (hereinafter referred to as "Landlord") and the Charleston County School District (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of the below-described property and firmly believes it is in the best interests of the Town of Sullivan's Island to have the Elementary School located and operating thereon, and desires to cooperate with the Tenant in having a new school built on the below-described property; and

WHEREAS, the use of said premises for a public elementary school is a material obligation of the Tenant under this lease agreement. The Tenant shall complete the design and construction of the school as soon as possible, using its best efforts, due diligence and any and all means available to expedite the completion of said facility. The Landlord and Tenant agree to expedite their obligations hereunder to complete the school for use and occupation by January 2014; and

WHEREAS, Tenant presently is leasing the below-described property pursuant to an Agreement entered into with the State of South Carolina and School District Number 2 of Charleston County, which expires in approximately forty (40) years; and

WHEREAS, Tenant desires to control the property for a longer term and desires to terminate it's existing lease and enter into this lease for a term of seventy-five (75) years; and

NOW, THEREFORE, in consideration of the terms and conditions of the within lease and the mutual promises and covenants herein contained and further in consideration of the sum

of Ten and No/100 ($10.00) Dollars, and other value consideration paid by Tenant, receipt whereof, which is acknowledged, Landlord does hereby lease and let to lease, and Tenant hereby takes and hires from Landlord upon and subject to the terms, conditions and provisions of this lease, the premises hereinafter described, together with all of the improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, for the term and upon the conditions of this lease as hereinafter provided.

1. PROPERTY LEASED. All that real property located within the Town of Sullivan's Island encompassing approximately 5.61 acres, butting and bounding on the North by the seaward boundary of Battery Gadsden and Battery Thompson. The South line, or seaward line, would be generally an east-west line along the remnants of the Old Rock Jetty. The West line would be located approximately seventy (70') feet east of the existing leased property line, and the East line shall be approximately seventy (70') feet west of the existing east leased property line. The legal description is shown more fully and described on Exhibit "A," being the area between points designated as "A", "B", "C" and "D", which is attached hereto and incorporated herein by reference (the Leased Property). Landlord will provide non-exclusive easements of access and egress by any and all pedestrian and vehicular means, including construction vehicles and equipment of all types, from I'on Avenue and Atlantic Avenues to the Leased Property for the term of this lease. For the term of this lease, Landlord will also provide non-exclusive easements of pedestrian access and egress to, from and between the Leased Property and the beach over the existing beach path as is reflected on Exhibit "A" to this lease.

2. TERM. The term of this Lease shall be for a period of seventy-five (75) years commencing on the 1ST day of July, 2011 and ending on the 30th day of June, 2086.

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3. RENT. Tenant agrees to pay rent hereunder to Landlord payable in advance upon the signing of this Lease in the amount of Ten and No/100 ($10.00) Dollars.

4. USE OF THE LEASED PROPERTY. The Leased Property and all of the improvements located thereon, or to be located, shall be used by the Tenant only as an Elementary School children of the Town, and the surrounding areas within the Charleston County School District, and for such other related purposes necessary for the operation of the Elementary School and the education of the children.

5. REVERSION. The lease premises shall revert to the possession and control of the Landlord at the end of the lease term, or upon the breach of any provision herein or any default by the Tenant. No notice shall be required for such reversion to occur; provided, however, Landlord may permit the Tenant an opportunity to cure any such default within a period of no longer than thirty (30) days from the occurrence of said breach or default.

Once the elementary school is completed and available for use as a public elementary school, any abandonment of that continuous use and purpose by the Tenant shall be a default and breach of this lease agreement. In such circumstances, the premises shall revert to the Landlord and the lease terminates.

Failure of the Tenant to maintain continuous use of the new school as a public elementary school for a period of twenty-four (24) months shall constitute abandonment of the lease and the premises. In the event that such abandonment occurs, then, in that event, the Landlord may terminate the lease, enter the premises, take control of the premises and use the premises for its purposes or lease said premises without encumbrance from the terminated lease herein. Any personal property remaining in the Leased Property at the expiration of the lease period shall be

deemed abandoned by the Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefore.

6. CONDITION AND MAINTENANCE OF THE LEASED PROPERTY. The Tenant accepts the property in its present condition. Landlord makes no representations or warranties, either expressed or implied, regarding the condition of the Leased Property, or its fitness for any purpose. Tenant agrees to at all times during the term of this Lease, be responsible, for the construction of all improvements and for any and all repairs, maintenance and replacements, ordinary and extraordinary, along with all infrastructure necessary to provide any and all utilities to the property. All such improvements shall be built in accordance with the laws, ordinances and building codes of the Town of Sullivan's Island, the County of Charleston, and the State of South Carolina.

7. TAXES AND INSURANCE. Tenant agrees to be responsible for all taxes, if any, and all insurance required on the premises.

8. UTILITIES. Tenant agrees to be responsible for providing and bringing all utilities to the property, and for paying all utilities on the Leased Property.

9. ASSIGNMENT OR SUBLEASE. Tenant shall not have the right to assign or sublet the Leased Property to any other entity. Tenant shall not assign, transfer, mortgage or pledge or otherwise encumber or dispose of this Lease, or sublet the premises, or any part thereof, without written approval of the Landlord. If this Lease is sublet, assigned, mortgaged, pledged, or otherwise encumbered or disposed of, or occupied without the Landlord's written permission, this Lease may, at the option of the Landlord, be terminated by a seven (7) day written notice to the Tenant.

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10. IMPROVEMENTS AND ALTERATIONS. Any new structures to be placed on the Leased Property, or any improvements to the Leased Property should not be made without the prior written consent of Landlord. Tenant hereby agrees to build the anticipated new school, taking into consideration the compatibility of the existing buildings located nearby and within the Town, with intentions to achieve neighborhood compatibility. In achieving neighborhood compatibility, the Tenant shall consider the standards of neighborhood compatibility as set out in Section 21-111 of the Town of Sullivan's Island Ordinances.

Tenant agrees to design the new school with input from the Town Council, or their duly appointed agents with the understanding and agreement that no construction shall begin until such plans have been approved by the Town Council. The Landlord and Tenant agree to create procedures for the Town and/or its agents or boards, to review the design in phases, and to review the construction pursuant to the design and specifications.

11. DESIGN APPROVAL PROCESS. Tenant shall submit to the Landlord all plans and designs for the new school to be located on the Leased Property. The approval process shall include the following approval steps:

Conceptual Design Parameters.

The parties agree that the conceptual design parameters for the new school building shall include a maximum of 74,000 square feet of conditioned space as defined by the International Building Code, with a maximum of 34 feet for Building A, with maximum of 48 feet height for two-story building (Building B), if required and justified to Council, with a maximum of 42 feet for multi-purpose building (Building C), and with maximum of 35 feet height for Building D.

12. CONCEPTUAL DESIGN. Submissions by the Tenant shall include height, square footage, footprint, side setbacks, seaward and inland setbacks, elevations, location of exterior

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HVAC and mechanical units, dumpster locations, other significant architectural exterior elements (including decks, porches, protrusions, roof lines), building coverage ratio of 27% percent of the Leased Property (based on first floor heated square footage of 65,600 square feet excluding decks, stairs, ramps, roof overhangs and sun shades), massing, and exterior façade relief designs.

The projected timetables for these submissions to the Landlord for approval are as follows:

1. **Conceptual Design** **September 2011**
   Schematic Design **September 2011**

   Elements:

   Traffic flow and parking
   Site orientation
   Building Height
   Massing
   Floor plans with elevations
   Roof lines
   HVAC/mechanical placements
   Entrance Design

2. **Design Development** **February 2012**
   Exterior/Con Docs **February 2012**
   Final Approval **February 2012**

   Elements:

   Approval of Exterior Materials and Colors
   Approval of Roof Material and Color
   Approval of Sidewalks and Ramps
   Approval of Preliminary Landscaping
   Approval of Playground Areas
   Approval of Joint Use Spaces
   Review of Typical Classroom Layout
   Approval of Storm Water Drainage Plan

Community Meetings

1. **Sullivan's Island Community Meeting #1 - September 2011**
2. **Sullivan's Island Community Meeting #2 - January 2012**
3. **Sullivan's Island Community Meeting #3 - May 2012**

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13. BUILDING INSPECTION. All building inspections, including the approval of the plans and specifications, shall be the sole responsibility and obligation of the Tenant and of the State of South Carolina, Department of Education, who shall approve all plans and inspect all construction in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide. It shall be the sole obligation and responsibility of State Superintendent of Education to approve construction and issue a certificate of occupancy at the completion of construction, prior to the occupation and use of the school building. The Town of Sullivan's Island may, but shall have no obligation to, require further inspections prior to occupancy, all at the expense of the Tenant. Notwithstanding any provisions here, the Town of Sullivan's Island shall not be responsible for the design, construction, maintenance or inspection of the new school and the Town of Sullivan's Island shall not be responsible for any future design, construction, maintenance or inspection of the new school.

14. DEMOLITION. The Tenant shall be required to apply for a demolition permit from the Town of Sullivan's Island prior to demolition of the existing structure on the Leased Property in accordance with the requirements of the Town of Sullivan's Island.

15. FUTURE CONSTRUCTION, RENOVATIONS, MAJOR ALTERATIONS. All future construction, renovations and major alterations shall be subject to the same procedures contained herein for the design and construction of the new school, subject to final approval by the Town of Sullivan's Island and any zoning provisions now existing or to be adopted by the Town.

16. HISTORIC STRUCTURES AND SITES. The Zoning Ordinance of the Town of Sullivan's Island provides for the creation of an Historic Preservation Overlay District, designed

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to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town. The Town has determined that the historic, architectural, cultural and aesthetic features of the Town represent valuable resources. Tenant agrees to conduct a survey of adjacent historic properties to the Leased Property and to promote, preserve, protect and enhance those structures and sites in accordance with the Zoning Ordinance of the Town and in compliance with all federal, state and local laws.

17. PROTECTION AND RESPONSIBILITY FOR NEIGHBORING PROPERTIES. During construction of the new school and thereafter, the Tenant shall at all times be responsible for any and all damages incurred by neighboring and adjacent properties, specifically including historic properties and sites. The Tenant, its contractors, agents and employees shall take precautions to avoid any damage to the neighboring and adjacent properties, and historic properties and sites. The Tenant shall be obligated to report to the Landlord any and all damages resulting from the construction and operation of the new school.

18. JOINT USE FACILITIES.

The parties agree to explore joint use of the school facilities and joint use of Town property including green areas for parking, public library improvements, auditorium and meeting room uses, landscaping adjacent areas and entrances, summer campus uses,

gardening projects, recreational use agreements, joint use and improvements to tennis courts with Tenant financial contribution, Battery Gadsden, joint recycling programs and improvements to access and egress routes with Tenant financial contributions.

19. ENVIRONMENTAL COMPLIANCE BY TENANT. Tenant agrees, that under all circumstances, Tenant shall comply with all federal, state and local laws, ordinances, rules and regulations which are applicable, as to the conduct of Tenant's business as it relates to the

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environment, including but not limited to, spillage, pollution and storage. Tenant shall not use, store or generate hazardous substances, as that term is otherwise defined in this Lease, at the Leased Property. Tenant will indemnify and hold harmless Landlord, its partners, its employees and agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, cost or expense of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors and invitees with respect to (i) the generation, manufacture, or operations involving transport, treatment, storage, handling, production, processing, disposal, release of any hazardous materials which are on, from or affecting the premises, including without limitation, the soil, water, vegetation, building and improvements on the premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (iv) any violations of laws, orders, regulations, requirements or demands of governmental authorities which are based upon or related to such hazardous materials including, without limitation, attorneys and consultants fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

20. LIENS. Tenant shall not create any liens for labor or materials against Landlord's or Tenant's interest in the premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only to secure the payment of any bill for work done or material furnished during the rental period of this lease. In

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the event that liens are placed on record against the premises by contractors, mechanics, laborers, material suppliers or others because of any action by Tenant, such placement of liens shall constitute a default of this lease by Tenant, unless said lien(s) are bonded by Tenant and removed from said premises within fourteen (14) days. Tenant shall require a written waiver of liens from all laborers, material suppliers, contractors, mechanics or others releasing any claim to Landlord's interest in said premises.

21. DAMAGE OR DESTRUCTION. In the event any of the structures located, or to be located, on the Leased Property are damaged and require replacement, the requirements of this Lease shall apply to any new structures or improvements being made to the property in the future.

22. INFRASTRUCTURE/IMPACT FEE. The Tenant acknowledges and agrees that any additional costs incurred during construction by the Town shall be paid by the Tenant to the Landlord upon the Landlord forwarding any invoices to the Tenant. In lieu of paying the Landlord for the impact on the infrastructure, Tenant will pay to Landlord $175,000.00 for an Impact Fee. A tree mitigation plan will be submitted to and subject to approval by Town Council of the Town of Sullivan's Island.

23. TRAFFIC FLOW. The Tenant acknowledges and agrees that car traffic entering the School will enter and exit from I'On Avenue, and buses will enter and exit through Atlantic Avenue. After initial approval by Landlord, any changes to the traffic pattern by the Tenant must be approved in writing by the Landlord. It is understood and acknowledged by the Tenant that access and egress routes to the new school are not part of the Leased Property. The Town of Sullivan's Island shall have the sole discretion to adjust the egress and access to the new school, as it shall determine necessary from time to time, after consultation with the Tenant based on

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public safety considerations. The Tenant shall maintain all roads primarily used for access and egress to school campus including Leased Property and easements.

24. TERMINATION OF EXISTING LEASE. Upon the execution of this Lease, the Landlord and the Tenant agree to execute a Termination of Lease, terminating that certain Lease entered in and by and between the State of South Carolina and School District Number 2 Charleston County the 23rd day of April, 1954.

25. INSURANCE TO BE PROVIDED BY TENANT

(a.) Coverage and Amount During the Term, Tenant shall maintain policies of insurance at its sole cost and expense as follows:

(i) Commercial General Liability Insurance, including property damage, insuring Tenant and with Landlord as an additional insured (and any Mortgagee or other person or persons whom Landlord may reasonably designate, called "Additional Insured" in this Lease) from and against claims, demands, actions, or liability for injury to, or death of any persons and for damage to property arising from or related to the use or occupancy of the Premises or the operation of Tenant's business. This policy must contain, but not be limited to, coverage for premises and operations, products and completed operations, maintenance and use of owned, non-owned, or hired automobiles, bodily injury, and property damage. The policy must have limits in an amount not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate. This insurance will include a contractual coverage endorsement insuring the performance by Tenant of its indemnity agreements contained in this Lease.

(ii) Tenant may, at its option, obtain insurance policies covering its furnishings, fixtures, equipment and articles of personal property (collectively, "Personal Property") in the Leased Property, and Tenant shall either cause Landlord to be named as an insured party under

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such policies (without entitling Landlord to receive any loss proceeds thereof) or obtain the insurer's waiver of all rights of subrogation against Landlord with respect to losses insured under such policies. Landlord shall have no liability for any damages incurred to any of Tenants furnishings, fixtures, equipment and articles of personal property in the Leased Property.

Tenant shall provide to Landlord prior to commencing any demolition or other activities pursuant to this lease, certificate(s) of insurance evidencing the insurance required pursuant to this Section 25.

(b.) Recognized Insurance Companies All insurance provided for in this paragraph shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of South Carolina and shall be written on the standard policies of such companies and shall provide for no deductible in excess of $100,000.00 ($250,000.00 as to flood insurance, as applicable) if available at reasonable cost. Tenant shall be responsible for any deductible.

(c.) Landlord's Non-Liability, Tenant's Own Insurance Other than for loss or damage caused by or resultant from the gross negligence or willful misconduct of Landlord, Tenant hereby waives all right of recovery which it might have against Landlord, Landlord's agents and employees, for loss or damage to Tenant's furniture, furnishings, fixtures, equipment, chattels and articles of personal property located on the Leased Property, nor shall Landlord be liable for any business interruption, or injury to or death of persons occurring in the Leased Property, or in any manner growing out of or in connection with Tenant's use and occupation of the Leased Property or the condition thereof, notwithstanding that such loss or damage may result from the negligence or fault of Landlord.

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Tenant shall advise Landlord promptly of the applicable provisions of such insurance policies and notify Landlord promptly of any cancellation or change therein.

All insurance carried by Tenant as to the Leased Property or as to any property located thereon or therein, whether or not such insurance is carried pursuant to this Lease, shall provide that the insurer waives all right of subrogation against Landlord with respect to losses insured under such policies.

26. INDEMNITY. Tenant is and shall be in exclusive control and possession of the Leased Property as provided herein, and Landlord shall not be liable for any injury or damage to any property or to any person happening on or about the Leased Property, nor for any injury or damage to the Leased Property, nor to any property of Tenant, or of any person contained therein except as a result of the gross negligence of Landlord or Landlord's employees, agents, contractors, licensees and invitees.

Tenant shall indemnify and save Landlord harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against Landlord by reason of:

(i) Any work or thing done in, on or about the Leased Property or any part thereof;

(ii) Any use, occupation, condition, operation of the Leased Property or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto or any occurrence on any of the same;

(iii) Any act or omission on the part of Tenant or any subtenant or any employees, licensees or invitees;

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(iv) Any accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Property; or any part thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto; and

(v) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease, or recording of this Lease. The provisions of this paragraph shall survive the expiration or earlier termination hereof.

Nothing contained herein shall be construed as an indemnification for injury to persons arising as a result of the gross negligence or willful misconduct of the Landlord.

28. FIRE INSURANCE RATE AND REQUIREMENTS. Tenant agrees, at its own cost and expenses, to comply with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction and any similar body, and the insurance company insuring the building.

29. ACCRETED LAND EDUCATIONAL PROGRAMS. Subject to existing laws and restrictions as applicable to the accreted land, the Tenant and the Landlord shall jointly develop and implement educational programs for students in the accreted land. It shall be the obligation of the Tenant to pay the costs of implementing such plans as are mutually agreed upon by the parties. Such plans shall be developed prior to completion of the construction of the new school so that these teaching areas in the accreted land will be available for use upon occupancy of the new school.

30. ZONING ENFORCEMENT POWERS. The parties hereby agree that all enforcement powers of the Town of Sullivan's Island, as contained in the Zoning Ordinance of the Town of Sullivan's Island, shall apply to the Leased Property and the construction, operation, occupancy, and use of the new school as if the Leased Property were zoned in any zoning

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category of the Zoning Ordinance. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to use any and all enforcement procedures of the Zoning Ordinance of the Town of Sullivan's Island on the Leased Property in its sole discretion.

31. ZONING. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to zone and to rezone the demised property. In the event of any conflict between the provisions of this lease agreement and the Zoning Ordinances of the Town of Sullivan's Island, the provisions of this lease plus the enforcement powers of the Zoning Ordinances shall apply, plus any new applicable provisions of the Zoning Ordinance. PROVIDED, HOWEVER, it is hereby acknowledged and agreed by Landlord and Tenant that for all purposes and in all respects the Leased Property shall be and is grandfathered under the Zoning Ordinances of the Town of Sullivan's Island (whether now existing or hereinafter enacted). To confirm and clarify by way of example only and not in limitation of the foregoing proviso, in the event of partial or full destruction of or damage to the school facilities constructed on the Leased Property by Tenant, provided that the plans and reconstruction, repair or replacement of the facilities necessary to restore such structures and improvements to what existed prior to the damage or destruction comply with the requirements set forth in this lease, the new structures and/or improvements shall be deemed in compliance, regardless of any rezoning of the Leased Property or any new applicable provisions of the Zoning Ordinances of the Town of Sullivan's Island.

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32. LEGAL EXPENSES. If suit shall be brought or claim shall be made (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Property, and/or for the recovery of rent or any other amount due under provisions of this Lease, or because of any other covenant contained herein, and the breach is established, the prevailing party, in addition to all other sums and relief obtained, shall be entitled to all expenses incurred therefore, including reasonable attorneys' fees and costs.

33. TIMELINESS AND DEADLINES.

Time is of the Essence in all matters in this Lease Agreement.

34. WAIVER OF RIGHTS. No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder, or to insist on the other party's strict compliance with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

35. SECTION HEADINGS. The section headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no ay to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

36. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged into this Agreement. This Agreement may be changed or supplemented only by an instrument in writing signed by both parties.

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37. ADDITIONAL INSTRUMENTS. The Parties agree to execute and deliver any instrument in writing necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever occasion shall arise including the execution of a short form memorandum of lease agreement which may be recorded at the Charleston County RMC Office by Tenant at its expense.

38. NOTICE. Any notices or demand required or permitted by law, or any provision of this Lease, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to the Town of Sullivan's Island, 1610 Middle Street, Sullivan's Island, SC 29482, or at such other address as Landlord may hereafter designated in writing to Tenant.

Any notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed to Tenant at 75 Calhoun Street, Charleston, South Carolina 29401, Attn: Superintendent of Schools, or at such other address as Tenant may hereafter designate in writing to Landlord.

39. GOVERNING LAW: ENFORCEMENT. This Agreement shall be governed by the laws of the State of South Carolina. If either party enforces the terms of this Lease by legal proceedings, the prevailing party in such proceedings shall be entitled to reimbursement from the other party to all reasonable costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the dated stated above.

Witness #1 Gerald A. Kaynard

Witness #2 Mary Jane Watson

Town of Sullivan's Island

BY: Michael Perkis

ITS: Mayor Pro Tempore
Town of Sullivan's Island
October 18, 2011

Witness #1

Witness #2

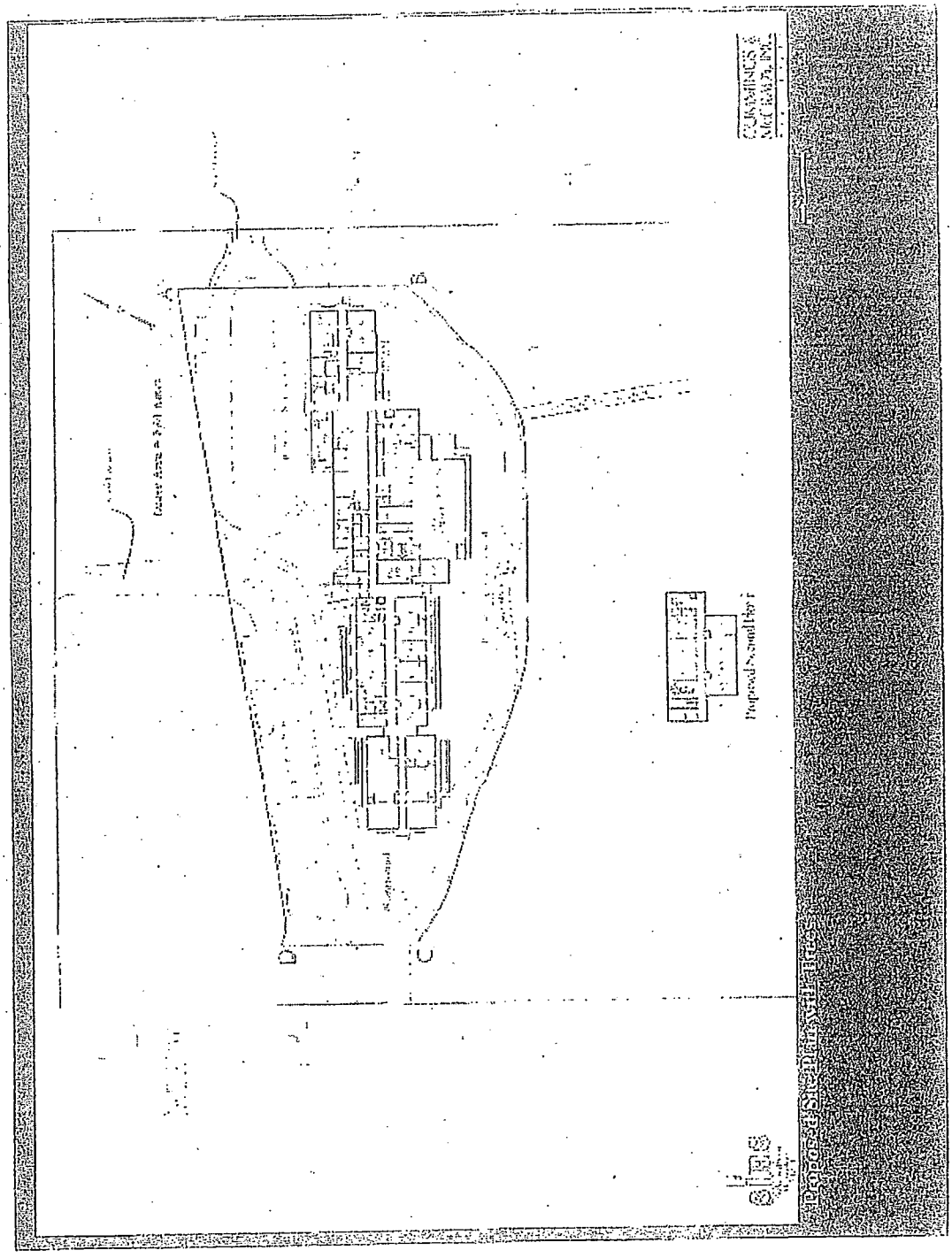
Charleston County School District

BY:

ITS: NJ McGinley
Superintendent
of Schools

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EXHIBIT A



CARL L. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERRIN, MAYOR PRO TEM
BILL HOWARD
JOHN KAYYARD
MARGERIE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

JOHN LESKI
TOWN ADMINISTRATOR

TERRI BLACKFORD
TOWN CLERK

LAWRENCE A. DUBOSE
TOWN ATTORNEY

CHIEF GRESS
CHIEF OF POLICE

DANIEL A. HOWARD
CHIEF OF STAFF

ROBERT M. GOTTLIEB
TOWN CLERK

SANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY SMITH
FIRE CHIEF

RESOLUTION

A RESOLUTION BY THE TOWN OF SULLIVAN'S ISLAND PLEDGING SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT TOWARD OPERATION OF AN ELEMENTARY SCHOOL ON SULLIVAN'S ISLAND

WHEREAS, the Charleston County School District has operated the highly successful Sullivan's Island Elementary School on Sullivan's Island for over 50 years; and,

WHEREAS, the Town of Sullivan's Island has contributed to the operation of that school through a long term no cost lease of sixteen acres of ocean front property; and,

WHEREAS, the members of Council recognize that the strength of the Town is found in its residents and the sense of community that is enhanced by a local school; and,

WHEREAS, a core component of a residential community is its local elementary school that will create a safe and trusted environment in which children can learn, socialize and personally grow while contributing to the Town; and,

WHEREAS, the members of Council view the school as a valuable asset of the Town and desire that the elementary school remain on the Island;

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of Sullivan's Island pledges its support and commitment to the Charleston County School District in the effort to maintain the school on Sullivan's Island; and,

BE IT FURTHER RESOLVED, that the Town Council of Sullivan's Island pledges its partnership with the Charleston County School District to continue the proud tradition of excellence at Sullivan's Island Elementary School.

Resolved this 19th Day of January, 2010.

TOWN OF SULLIVAN'S ISLAND

Carl J. Smith, Mayor

Attest:

Ellen McQueeney, Town Clerk

Andy Benkp, Town Administrator

SCHOOL DISTRICT

TO: Board of Trustees

FROM: Michael Bobby, Chief Financial and Operations Officer

DATE: August 15, 2011

SUBJECT: Sullivan's Island Elementary School – Town of Sullivan's Island LEASE

RECOMMENDATION: Approve lease as presented.

The material is submitted for: ☒ Action ☐ Information

☐ Open ☒ Executive

Respectfully submitted:

Nancy J. McGinley, Ed.D
Superintendent of Schools

Michael L. Bobby
Chief Financial and Operations Officer

N/A
J. Douglas Gepford, Ph.D.
Chief Academic Officer

N/A
William Lewis
Chief Operating Officer, Capital Programs

N/A
Cindy Bohn Coats
Chair, Audit & Finance Committee

☐ Item voted on and recommended for Board approval by the A&F Committee on _____

N/A
Elizabeth Moffly
Chair, Policy Committee

☐ Item voted on and recommended for Board approval by the Policy Committee on _____

Capital Projects

August 15, 2011

TOPIC:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

BACKGROUND:

On March 27, 2006 by Item 9.4 the Board approved the construction and budget for the New Sullivan's Island Elementary School. As part of the 2005-2009 Capital Building Program, CCSD Board of Trustees approved the advance design for a new Sullivan's Island Elementary School to design development phase. The Board of Trustees approval to replace the existing school versus renovations and additions to the existing facility came after schematic design of the renovation and addition project as well as the finalization of the seismic analysis. The estimate of that scope of work deemed the project un-executable because the value of the improvements exceeded 50% of the appraised value of the facility, thereby, requiring that all buildings must be upgraded to current building codes and FEMA requirements.

Because the original scope of work was deemed un-executable, CCSD Board of Trustees approved the construction of a new facility on the existing site utilizing reserves and construction savings from the 2005-2009 Capital Building Program. Prior to the Board of Trustees approving the replacement of the existing facility, it was requested by CCSD to the Town of Sullivan's Island that a "Memorandum of Understanding/Resolution" be given to CCSD stating they were in total agreement to extend the lease to allow CCSD to construct the new facility on the existing site (see attached Resolution of the Town of Sullivan's Island dated January 19, 2010).

Over the past several months Staff, Architect (Cummings & McCrady) and the Program Manager, (Cumming/SMG) have been working with the Town of Sullivan's Island to resolve, in advance, any potential issues the Town of Sullivan's Island could impose that would affect the design or construction of the new facility. Concurrently, CCSD Staff, CCSD's Real Estate Attorney (Clawson & Staubes), and C/SMG have been working with Town of Sullivan's Island Town Administrator to finalize the New Lease for the property.

On July 9, 2011, CCSD Staff, Architect, and Program Manager presented to Council, in Executive Session, CCSD's concerns with the draft proposed lease as submitted by The Town of Sullivan's Island.

The Town of Sullivan's Island noted CCSD's concerns and on August 3, 2011; CCSD received a revised draft lease addressing most all of CCSD's concerns noting only minor changes.

CCSD's Staff, Legal Counsel (Clawson & Staubes), Architect, and Program Manager have been successful in negotiating the final lease addressing both CCSD and The Town of Sullivan's Island concerns.

DISCUSSION:

The lease needs to be approved so the Architect can move forward with design and approvals. Also, CCSD needs to approve the lease in advance of The Town of Sullivan's Island formally approving at their August 16, 2011 Council Meeting.

RECOMMENDATION:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

FUNDING SOURCE/COST:

No additional funds are required.

FUTURE FISCAL IMPACT:

None

DATA SOURCES:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

PREPARED BY:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

REVIEWED BY LEGAL SERVICES

Matthew Moore, Clawson & Staubes

REVIEWED BY PROCUREMENT SERVICES

Lawrence Lutrario

ATTACHMENTS

1. Resolution of The Town of Sullivan's Island dated January 19, 2010
2. Lease

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2012-CP-10-6830
	)	
MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,	)	
	)	
Plaintiffs,	)	**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS**
	)	
v.	)	
	)	
TOWN OF SULLIVAN'S ISLAND,	)	
	)	
Defendants	)	

TO: Duffy & Young, LLC, attorneys for the Plaintiff:

You will please take notice that the undersigned, as attorneys for the Defendant, Town of Sullivan's Island, will, ten (10) days after the service of this Notice of Motion and Motion, or as soon thereafter as counsel may be heard, move before the presiding judge for the Court of Common Pleas, Charleston County at the Charleston County Courthouse, for an order pursuant to Rule 12(c), SCRCP, granting the Defendant judgment on the pleadings on the grounds that the proposed initiated ordinance as set forth in the Exhibit to the Complaint is legally invalid for the several reasons set forth in Defendant's Answer, and further on the grounds that the proposed initiated ordinance is moot. The Defendant has no duty to submit the invalid initiated ordinance to the electorate as a matter of law based on the allegations of the Complaint and Answer.

This motion will be based on the pleadings, exhibits thereto, and the applicable law.

PRATT-THOMAS WALKER, P.A.

BY: G. Trenholm Walker

G. Trenholm Walker
W. Andrew Gowder, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
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Lawrence A. Dodds, Esq.
DODDS AND HENNESSY, LLP
P. O. Box 1126
Mt. Pleasant, SC 29464
T: (843) 881-1022 ext. 13
F: (843) 884-0351
ldodds@doddsandhennessy.com

ATTORNEYS FOR DEFENDANT
TOWN OF SULLIVAN'S ISLAND

November 13th, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).
on this 13 day of November, 2012
Charleston, South Carolina

Yvette Y. Epps

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-6830

MARTHA SMITH, KATHLEEN POST, AND WILLIAM POST,

Plaintiffs,

v.

TOWN OF SULLIVAN'S ISLAND,

Defendant,

FIRST AMENDED COMPLAINT
(NON-JURY)

2013 SEP -5 AM 9:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COME NOW Plaintiffs, Martha Smith ("Smith"), Kathleen Post ("K. Post"), and William Post ("W. Post") and allege and say:

PARTIES AND JURISDICTION

1. The Plaintiffs are citizens and residents of Sullivan's Island, South Carolina and registered to vote there.

2. The Defendant Town of Sullivan's Island (the "Town") is a municipal corporation organized and existing under the laws of the State of South Carolina.

3. This Court has jurisdiction over the subject matter of this action.

4. Venue is proper in Charleston County under S.C. Code § 15-7-30.

MATERIAL FACTS

5. This action is brought pursuant to the general law of South Carolina and Section 15-53-10, et seq., of the South Carolina Code of Laws, 1976, as amended, known as the "Uniform Declaratory Judgments Act."

6. In early October 2011, Plaintiffs and other Sullivan's Island voters signed the Petition attached hereto as Exhibit A.

7. On or about October 10, 2011, the Petition attached as Exhibit A was presented to the Town administrator and was also presented to the Board of Elections.

8. On or about October 18, 2011, the Charleston County Election Commission certified the Petition attached hereto as Exhibit A, and the Petition was submitted to the Sullivan's Island Town Council at a regular meeting.

9. The Plaintiffs complied in full with South Carolina's Initiative and Referendum Statue, which was made law by the South Carolina General Assembly and is codified at S.C. Code Ann. §§ 5-17-10 and 5-17-30.

10. S.C. Code § 5-17-10 gives voters the right to submit a proposed ordinance (except an ordinance appropriating money or authorizing the levy of taxes) to town council provided it is submitted by petition signed by at least fifteen (15) percent of registered voters and certified by the municipal election commission.

11. S.C. Code § 5-17-30 provides that if council does not pass the proposed ordinance submitted by petition or passes it in a substantially different form, then the proposed ordinance must be submitted to the voters in an election within one year.

12. The Petition referenced herein does not 1) appropriate money or 2) levy taxes.

13. The Petition referenced herein is signed by more than 15% of the registered voters on Sullivan's Island.

14. More than a year has passed since Sullivan's Island Town Council rejected the proposed ordinance, and no election on the proposed ordinance has been held.

15. The Sullivan's Island Town Council has neither 1) adopted the Petition referenced herein nor 2) held a public vote on the Petition referenced herein either of which is required by S.C. Code Ann. § 5-17-30.

16. By common law, the Supreme Court of South Carolina has ruled that a South Carolina Circuit Court Judge has the authority to rule on the validity of a petition initiated under S.C. Code § 5-17-30. See Town of Hilton Head Island v. Coal. of Expressway Opponents, 307 S.C. 449, 458, 415 S.E.2d 801, 806 (1992).

17. No municipal government in South Carolina has the authority to independently determine the validity of a petition initiated under S.C. Code § 5-17-30.

18. The Town of Sullivan's Island has declared the petition at issue in this case to be invalid and therefore decided that it is not obligated to comply with the law of South Carolina as codified at S.C. Code § 5-17-30 et. seq.

19. The Town of Sullivan's Island lacks the authority to determine the validity of the subject petition as only a circuit court judge may make such a determination.

20. The Town of Sullivan's Island has deprived the Plaintiffs of their statutory and political rights to participate in local government in the manner set forth by the South Carolina General Assembly.

21. By exercising authority that exceeds the scope of its limited governmental powers, the Town of Sullivan's Island has deprived the Plaintiffs of their right to due process and their right to effectively petition their local government in the manner set forth by the South Carolina General Assembly.

22. To preserve and protect their vested political and due process rights, the Plaintiffs were left with no reasonable alternative but to bring the present action and seek judicial intervention from the courts.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

23. Plaintiffs incorporate by reference the allegations in the foregoing paragraphs as if fully set forth herein.

24. A party whose rights, status or other legal relations are affected by a statute or municipal ordinance may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder. S.C. Code Ann. §15-53-30.

25. A real controversy exists between the parties in which the parties have a legal and actual interest that is ripe for resolution.

26. The Plaintiffs have standing to bring the present case.

27. The Sullivan's Island Town Council has declared the Petition referenced herein to be "invalid", "moot", or otherwise improper.

28. A concrete issue is present and the Plaintiffs assert a positive legal duty, which has been denied by the Town.

29. The Plaintiffs have no adequate remedy at law as the present case involves their rights to participate in local government in the manner prescribed by South Carolina law.

30. The Plaintiffs have suffered irreparable harm in that the Town of Sullivan's Island has unfairly and unreasonably suppressed the Plaintiff's rights to participate in local government in the manner prescribed by South Carolina law.

31. As set forth by the South Carolina Supreme Court in the case of Town of Hilton Head v. Coalition of Expressway Opponents[1], municipal governments like the Town Council of Sullivan's Island lack the discretion or authority to reject the Petition referenced herein.

32. Through its conduct as set forth herein the Sullivan's Island Town Council has deprived the Plaintiffs of their right to participate in their local government in the manner prescribed by South Carolina law.

33. The Plaintiffs seek a declaration that the Defendant has failed to comply with the law of South Carolina as set forth herein.

SECOND CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983:
Deprivation of Voting Rights and Due Process Violation of the South Carolina and United States Constitutions)

34. Plaintiffs incorporate by reference the allegations in the foregoing paragraphs as if fully set forth herein.

35. Exercise of the right to vote is a fundamental right under the United States Constitution and Article II, section 2 of the South Carolina Constitution.

36. The right of organized and interested citizens in South Carolina to effect local government by petition is a substantial and vested political right granted by the South Carolina General Assembly to the citizens of South Carolina in the manner set forth at S.C. Code Ann. §15-53-30 et. seq.

37. The Defendant, as a municipal government, is a state actor subject to 42 U.S.C. § 1983.

[1] The Supreme Court of South Carolina has stated as follows: "We emphasize that these are findings which can be made pursuant to judicial inquiry only, and that a municipality has no power to pass on the validity of an initiated ordinance; a declaratory judgment action is the appropriate method by which a municipality may seek pre-election review of an initiated ordinance." Town of Hilton Head Island v. Coal. of Expressway Opponents, 307 S.C. 449, 458, 415 S.E.2d 801, 806 (1992).

38. The Defendant deprived the Plaintiffs of fundamental and substantial political rights as set forth at S.C. Code Ann. §15-53-30 et. seq. when the Town of Sullivan's Island unilaterally declared the subject petition to be "invalid."

39. In contravention of South Carolina law, the Town of Sullivan's Island deprived Plaintiffs of their vested, political rights and of due process by refusing 1) to adopt the ordinance or 2) to conduct a referendum or 3) to pursue a judicial declaration of the invalidity of the subject petition regarding the Plaintiffs' proposed ordinance.

40. Plaintiffs are entitled to due process under the law pursuant to the Fourteenth Amendment of the United States Constitution and Article I, section 3 of the South Carolina Constitution.

41. Acting under the color of law, the Defendant deprived Plaintiffs of their voting rights and right to due process under the United States Constitution, the South Carolina State Constitution, and South Carolina statute.

42. As a result of the Defendant's conduct as set forth herein, Plaintiffs have suffered intangible and immeasurable damages in the form of the loss of their right to meaningfully and fairly participate in their local government in the manner set forth by the South Carolina General Assembly.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendants have violated Plaintiffs' state and federal constitutional rights, as set forth above;

2. Grant Plaintiffs injunctive relief in the form of an Order of the Court or Writ of Mandamus directing the Town of Sullivan's Island to 1) adopt the proposed ordinance or 2) hold a public referendum as required by the law of South Carolina;

3. Award costs and attorney's fees to Plaintiffs for their defense of the constitutional rights of themselves and other petition signors pursuant to 42 U.S.C. § 1988 and applicable South Carolina law a precedent;

4. Grant Plaintiffs such further and other relief as may be just, proper, or appropriate to those matters brought before this Court.

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Attorneys for Plaintiffs

September 5, 2013
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No.: 2012-CP-10-6830
Martha Smith, Kathleen Post, and William Post	)	
Plaintiff,	)	
v.	)	**ANSWER TO FIRST AMENDED COMPLAINT**
Town of Sullivan's Island	)	
Defendants.	)	

Defendant, answering the First Amended Complaint herein, alleges and states as follows:

FOR A FIRST DEFENSE

Each and every allegation of the First Amended Complaint not hereinafter admitted, qualified, or explained, is deemed denied.

1. The Defendant, Town of Sullivan's Island (the "Town" or the "Defendant") admits the allegations of paragraphs 1, 2, 3, and 4.

2. The allegations of paragraph 5 express a conclusion of law which the Town is required neither to admit nor deny.

3. As to the allegations of paragraph 6, the Town admits that it was presented with the petition attached as Exhibit A but lacks sufficient information and belief as to when all the signatories signed it.

4. The Town admits, upon information and belief, the allegations of paragraph 7.

5. The Town admits, upon information and belief, the allegations of paragraph 8.

6. The allegations of paragraph 9 express a conclusion of law which the Town is required neither to admit nor deny.

7. The allegations of paragraphs 10 and 11 express a conclusion of law which the Town is required neither to admit nor deny. The Town craves reference to the statutory sections mentioned and denies any allegations inconsistent therewith.

8. The Town admits the allegations of paragraph 12.

9. The Town admits, upon information and belief, the allegations of paragraph 13.

10. The Town admits the allegations of paragraph 14 and 15, further alleging that the matters set forth in the petition are not subject to initiative and referendum under the laws of South Carolina.

11. The allegations of paragraphs 16, 17, 18, 19, 20, 21, and 22 express a conclusion of law which the Town is required neither to admit nor deny. The Town craves reference to the statutory sections and Supreme Court opinion mentioned and denies any allegations inconsistent therewith.

12. The Town realleges its previous allegations in response to the allegations realleged in paragraph 23.

13. The allegations of paragraph 24, 25, and 26 express a conclusion of law which the Town is required neither to admit nor deny.

14. The Town admits the allegations of paragraph 27.

15. As to the allegations of paragraph 28 the Town admits that the Town has asserted that it does not have a legal obligation to proceed with the referendum or adopt the proposed ordinance.

16. The allegations of paragraph 29 allege a conclusion of law which the Town is required to neither admit nor deny.

17. The Town denies the allegations of paragraph 30.

18. As to the allegations of paragraph 31, the Town craves reference to the opinion of the Supreme Court and denies any allegations inconsistent therewith.

19. The Town denies the allegations of paragraph 32.

20. As to the allegation of paragraph 33, the Town admits that the Plaintiffs seek a declaratory judgment but denies that the Town has failed to comply with the law.

21. The Town realleges its previous allegations in response to the allegations realleged in paragraph 34.

22. The allegations of paragraphs 35, 36, 37, 38, 39, 40, and 41 express a conclusion of law which the Town is required neither to admit nor deny.

23. The Town denies the allegations of paragraph 42.

24. The Town denies any and all additional allegations as well as those allegations in the prayer for relief.

FOR A SECOND DEFENSE

25. The Town has no obligation to place the proposed initiated ordinance on a ballot for referendum nor to conduct the referendum since the proposed initiated ordinance relates to improper subjects for an initiated ordinance including administrative matters, zoning and land use matters, and matters subject to statutes and regulations that require state and/or county wide uniformity, and otherwise conflicts with state law.

FOR A THIRD DEFENSE

26. The Town has duly entered a lease with the Charleston County School District for the Sullivan's Island Elementary School site, copy attached as Exhibit 1 hereto.

27. The proposed initiated ordinance is invalid for the additional reason that it seeks to compel the Town to breach the lease which is contrary to and in violation of state law.

FOR A FOURTH DEFENSE

28. The proposed initiated ordinance is moot for several reasons, including on the ground that the lease requires that the design of the elementary school comply with the Town's design guideline for neighborhood compatibility as stated in the adopted ordinances of the Town, and such design has been specifically reviewed and approved by Town Council which previously adopted those design guidelines as an ordinance and has responsibility for approving all codified design guidelines, and which is the appropriate body for approving such design of the new elementary school to be located on a site outside the purview of the Town's Design Review Board.

WHEREFORE, having fully answered the Complaint herein, the Defendant prays that the court enter its declaratory judgment that the Defendant has no legal obligation to proceed with a referendum and submit to the electorate the proposed initiated referendum, and for an award of its costs and such further and other relief as is just and proper.

PRATT-THOMAS WALKER, P.A.

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ATTORNEYS FOR TOWN OF SULLIVAN'S ISLAND

September 22, 2013
Charleston, South Carolina.

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 22 day of September 2013, in Charleston, South Carolina.

EXHIBIT 1
TO ANSWER
TO AMENDED COMPLAINT

STATE OF SOUTH CAROLINA)
) LEASE AGREEMENT
COUNTY OF CHARLESTON)

This Lease Agreement is made and entered into as of this 18th day of October, 2011 by and between the Town of Sullivan's Island (hereinafter referred to as "Landlord") and the Charleston County School District (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of the below-described property and firmly believes it is in the best interests of the Town of Sullivan's Island to have the Elementary School located and operating thereon, and desires to cooperate with the Tenant in having a new school built on the below-described property; and

WHEREAS, the use of said premises for a public elementary school is a material obligation of the Tenant under this lease agreement. The Tenant shall complete the design and construction of the school as soon as possible, using its best efforts, due diligence and any and all means available to expedite the completion of said facility. The Landlord and Tenant agree to expedite their obligations hereunder to complete the school for use and occupation by January 2014; and

WHEREAS, Tenant presently is leasing the below-described property pursuant to an Agreement entered into with the State of South Carolina and School District Number 2 of Charleston County, which expires in approximately forty (40) years; and

WHEREAS, Tenant desires to control the property for a longer term and desires to terminate it's existing lease and enter into this lease for a term of seventy-five (75) years; and

NOW, THEREFORE, in consideration of the terms and conditions of the within lease and the mutual promises and covenants herein contained and further in consideration of the sum

of Ten and No/100 ($10.00) Dollars, and other value consideration paid by Tenant, receipt whereof, which is acknowledged, Landlord does hereby lease and let to lease, and Tenant hereby takes and hires from Landlord upon and subject to the terms, conditions and provisions of this lease, the premises hereinafter described, together with all of the improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, for the term and upon the conditions of this lease as hereinafter provided.

1. PROPERTY LEASED. All that real property located within the Town of Sullivan's Island encompassing approximately 5.61 acres, butting and bounding on the North by the seaward boundary of Battery Gadsden and Battery Thompson. The South line, or seaward line, would be generally an east-west line along the remnants of the Old Rock Jetty. The West line would be located approximately seventy (70') feet east of the existing leased property line, and the East line shall be approximately seventy (70') feet west of the existing east leased property line. The legal description is shown more fully and described on Exhibit "A," being the area between points designated as "A", "B", "C" and "D", which is attached hereto and incorporated herein by reference (the Leased Property). Landlord will provide non-exclusive easements of access and egress by any and all pedestrian and vehicular means, including construction vehicles and equipment of all types, from I'on Avenue and Atlantic Avenues to the Leased Property for the term of this lease. For the term of this lease, Landlord will also provide non-exclusive easements of pedestrian access and egress to, from and between the Leased Property and the beach over the existing beach path as is reflected on Exhibit "A" to this lease.

2. TERM. The term of this Lease shall be for a period of seventy-five (75) years commencing on the 1ST day of July, 2011 and ending on the 30th day of June, 2086.

3. RENT. Tenant agrees to pay rent hereunder to Landlord payable in advance upon the signing of this Lease in the amount of Ten and No/100 ($10.00) Dollars.

4. USE OF THE LEASED PROPERTY. The Leased Property and all of the improvements located thereon, or to be located, shall be used by the Tenant only as an Elementary School children of the Town, and the surrounding areas within the Charleston County School District, and for such other related purposes necessary for the operation of the Elementary School and the education of the children.

5. REVERSION. The lease premises shall revert to the possession and control of the Landlord at the end of the lease term, or upon the breach of any provision herein or any default by the Tenant. No notice shall be required for such reversion to occur; provided, however, Landlord may permit the Tenant an opportunity to cure any such default within a period of no longer than thirty (30) days from the occurrence of said breach or default.

Once the elementary school is completed and available for use as a public elementary school, any abandonment of that continuous use and purpose by the Tenant shall be a default and breach of this lease agreement. In such circumstances, the premises shall revert to the Landlord and the lease terminates.

Failure of the Tenant to maintain continuous use of the new school as a public elementary school for a period of twenty-four (24) months shall constitute abandonment of the lease and the premises. In the event that such abandonment occurs, then, in that event, the Landlord may terminate the lease, enter the premises, take control of the premises and use the premises for its purposes or lease said premises without encumbrance from the terminated lease herein. Any personal property remaining in the Leased Property at the expiration of the lease period shall be

deemed abandoned by the Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefore.

6. CONDITION AND MAINTENANCE OF THE LEASED PROPERTY. The Tenant accepts the property in its present condition. Landlord makes no representations or warranties, either expressed or implied, regarding the condition of the Leased Property, or its fitness for any purpose. Tenant agrees to at all times during the term of this Lease, be responsible, for the construction of all improvements and for any and all repairs, maintenance and replacements, ordinary and extraordinary, along with all infrastructure necessary to provide any and all utilities to the property. All such improvements shall be built in accordance with the laws, ordinances and building codes of the Town of Sullivan's Island, the County of Charleston, and the State of South Carolina.

7. TAXES AND INSURANCE. Tenant agrees to be responsible for all taxes, if any, and all insurance required on the premises.

8. UTILITIES. Tenant agrees to be responsible for providing and bringing all utilities to the property, and for paying all utilities on the Leased Property.

9. ASSIGNMENT OR SUBLEASE. Tenant shall not have the right to assign or sublet the Leased Property to any other entity. Tenant shall not assign, transfer, mortgage or pledge or otherwise encumber or dispose of this Lease, or sublet the premises, or any part thereof, without written approval of the Landlord. If this Lease is sublet, assigned, mortgaged, pledged, or otherwise encumbered or disposed of, or occupied without the Landlord's written permission, this Lease may, at the option of the Landlord, be terminated by a seven (7) day written notice to the Tenant.

10. IMPROVEMENTS AND ALTERATIONS. Any new structures to be placed on the Leased Property, or any improvements to the Leased Property should not be made without the prior written consent of Landlord. Tenant hereby agrees to build the anticipated new school, taking into consideration the compatibility of the existing buildings located nearby and within the Town, with intentions to achieve neighborhood compatibility. In achieving neighborhood compatibility, the Tenant shall consider the standards of neighborhood compatibility as set out in Section 21-111 of the Town of Sullivan's Island Ordinances.

Tenant agrees to design the new school with input from the Town Council, or their duly appointed agents with the understanding and agreement that no construction shall begin until such plans have been approved by the Town Council. The Landlord and Tenant agree to create procedures for the Town and/or its agents or boards, to review the design in phases, and to review the construction pursuant to the design and specifications.

11. DESIGN APPROVAL PROCESS. Tenant shall submit to the Landlord all plans and designs for the new school to be located on the Leased Property. The approval process shall include the following approval steps:

Conceptual Design Parameters.

The parties agree that the conceptual design parameters for the new school building shall include a maximum of 74,000 square feet of conditioned space as defined by the International Building Code, with a maximum of 34 feet for Building A, with maximum of 48 feet height for two-story building (Building B), if required and justified to Council, with a maximum of 42 feet for multi-purpose building (Building C), and with maximum of 35 feet height for Building D.

12. CONCEPTUAL DESIGN. Submissions by the Tenant shall include height, square footage, footprint, side setbacks, seaward and inland setbacks, elevations, location of exterior

HVAC and mechanical units, dumpster locations, other significant architectural exterior elements (including decks, porches, protrusions, roof lines), building coverage ratio of 27% percent of the Leased Property (based on first floor heated square footage of 65,600 square feet excluding decks, stairs, ramps, roof overhangs and sun shades), massing, and exterior façade relief designs.

The projected timetables for these submissions to the Landlord for approval are as follows:

1. **Conceptual Design** **September 2011**
   Schematic Design **September 2011**

   Elements:

   Traffic flow and parking
   Site orientation
   Building Height
   Massing
   Floor plans with elevations
   Roof lines
   HVAC/mechanical placements
   Entrance Design

2. **Design Development** **February 2012**
   Exterior/Con Docs **February 2012**
   Final Approval **February 2012**

   Elements:

   Approval of Exterior Materials and Colors
   Approval of Roof Material and Color
   Approval of Sidewalks and Ramps
   Approval of Preliminary Landscaping
   Approval of Playground Areas
   Approval of Joint Use Spaces
   Review of Typical Classroom Layout
   Approval of Storm Water Drainage Plan

Community Meetings

1. **Sullivan's Island Community Meeting #1 - September 2011**
2. **Sullivan's Island Community Meeting #2 - January 2012**
3. **Sullivan's Island Community Meeting #3 - May 2012**

13. BUILDING INSPECTION. All building inspections, including the approval of the plans and specifications, shall be the sole responsibility and obligation of the Tenant and of the State of South Carolina, Department of Education, who shall approve all plans and inspect all construction in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide. It shall be the sole obligation and responsibility of State Superintendent of Education to approve construction and issue a certificate of occupancy at the completion of construction, prior to the occupation and use of the school building. The Town of Sullivan's Island may, but shall have no obligation to, require further inspections prior to occupancy, all at the expense of the Tenant. Notwithstanding any provisions here, the Town of Sullivan's Island shall not be responsible for the design, construction, maintenance or inspection of the new school and the Town of Sullivan's Island shall not be responsible for any future design, construction, maintenance or inspection of the new school.

14. DEMOLITION. The Tenant shall be required to apply for a demolition permit from the Town of Sullivan's Island prior to demolition of the existing structure on the Leased Property in accordance with the requirements of the Town of Sullivan's Island.

15. FUTURE CONSTRUCTION, RENOVATIONS, MAJOR ALTERATIONS. All future construction, renovations and major alterations shall be subject to the same procedures contained herein for the design and construction of the new school, subject to final approval by the Town of Sullivan's Island and any zoning provisions now existing or to be adopted by the Town.

16. HISTORIC STRUCTURES AND SITES. The Zoning Ordinance of the Town of Sullivan's Island provides for the creation of an Historic Preservation Overlay District, designed

to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town. The Town has determined that the historic, architectural, cultural and aesthetic features of the Town represent valuable resources. Tenant agrees to conduct a survey of adjacent historic properties to the Leased Property and to promote, preserve, protect and enhance those structures and sites in accordance with the Zoning Ordinance of the Town and in compliance with all federal, state and local laws.

17. PROTECTION AND RESPONSIBILITY FOR NEIGHBORING PROPERTIES. During construction of the new school and thereafter, the Tenant shall at all times be responsible for any and all damages incurred by neighboring and adjacent properties, specifically including historic properties and sites. The Tenant, its contractors, agents and employees shall take precautions to avoid any damage to the neighboring and adjacent properties, and historic properties and sites. The Tenant shall be obligated to report to the Landlord any and all damages resulting from the construction and operation of the new school.

18. JOINT USE FACILITIES.

The parties agree to explore joint use of the school facilities and joint use of Town property including green areas for parking, public library improvements, auditorium and meeting room uses, landscaping adjacent areas and entrances, summer campus uses, gardening projects, recreational use agreements, joint use and improvements to tennis courts with Tenant financial contribution, Battery Gadsden, joint recycling programs and improvements to access and egress routes with Tenant financial contributions.

19. ENVIRONMENTAL COMPLIANCE BY TENANT. Tenant agrees, that under all circumstances, Tenant shall comply with all federal, state and local laws, ordinances, rules and regulations which are applicable, as to the conduct of Tenant's business as it relates to the

environment, including but not limited to, spillage, pollution and storage. Tenant shall not use, store or generate hazardous substances, as that term is otherwise defined in this Lease, at the Leased Property. Tenant will indemnify and hold harmless Landlord, its partners, its employees and agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, cost or expense of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors and invitees with respect to (i) the generation, manufacture, or operations involving transport, treatment, storage, handling, production, processing, disposal, release of any hazardous materials which are on, from or affecting the premises, including without limitation, the soil, water, vegetation, building and improvements on the premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (iv) any violations of laws, orders, regulations, requirements or demands of governmental authorities which are based upon or related to such hazardous materials including, without limitation, attorneys and consultants fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

20. LIENS. Tenant shall not create any liens for labor or materials against Landlord's or Tenant's interest in the premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only to secure the payment of any bill for work done or material furnished during the rental period of this lease. In

the event that liens are placed on record against the premises by contractors, mechanics, laborers, material suppliers or others because of any action by Tenant, such placement of liens shall constitute a default of this lease by Tenant, unless said lien(s) are bonded by Tenant and removed from said premises within fourteen (14) days. Tenant shall require a written waiver of liens from all laborers, material suppliers, contractors, mechanics or others releasing any claim to Landlord's interest in said premises.

21. DAMAGE OR DESTRUCTION. In the event any of the structures located, or to be located, on the Leased Property are damaged and require replacement, the requirements of this Lease shall apply to any new structures or improvements being made to the property in the future.

22. INFRASTRUCTURE/IMPACT FEE. The Tenant acknowledges and agrees that any additional costs incurred during construction by the Town shall be paid by the Tenant to the Landlord upon the Landlord forwarding any invoices to the Tenant. In lieu of paying the Landlord for the impact on the infrastructure, Tenant will pay to Landlord $175,000.00 for an Impact Fee. A tree mitigation plan will be submitted to and subject to approval by Town Council of the Town of Sullivan's Island.

23. TRAFFIC FLOW. The Tenant acknowledges and agrees that car traffic entering the School will enter and exit from I'On Avenue, and buses will enter and exit through Atlantic Avenue. After initial approval by Landlord, any changes to the traffic pattern by the Tenant must be approved in writing by the Landlord. It is understood and acknowledged by the Tenant that access and egress routes to the new school are not part of the Leased Property. The Town of Sullivan's Island shall have the sole discretion to adjust the egress and access to the new school, as it shall determine necessary from time to time, after consultation with the Tenant based on

public safety considerations. The Tenant shall maintain all roads primarily used for access and egress to school campus including Leased Property and easements.

24. TERMINATION OF EXISTING LEASE. Upon the execution of this Lease, the Landlord and the Tenant agree to execute a Termination of Lease, terminating that certain Lease entered in and by and between the State of South Carolina and School District Number 2 Charleston County the 23rd day of April, 1954.

25. INSURANCE TO BE PROVIDED BY TENANT

(a.) Coverage and Amount During the Term, Tenant shall maintain policies of insurance at its sole cost and expense as follows:

(i) Commercial General Liability Insurance, including property damage, insuring Tenant and with Landlord as an additional insured (and any Mortgagee or other person or persons whom Landlord may reasonably designate, called "Additional Insured" in this Lease) from and against claims, demands, actions, or liability for injury to, or death of any persons and for damage to property arising from or related to the use or occupancy of the Premises or the operation of Tenant's business. This policy must contain, but not be limited to, coverage for premises and operations, products and completed operations, maintenance and use of owned, non-owned, or hired automobiles, bodily injury, and property damage. The policy must have limits in an amount not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate. This insurance will include a contractual coverage endorsement insuring the performance by Tenant of its indemnity agreements contained in this Lease.

(ii) Tenant may, at its option, obtain insurance policies covering its furnishings, fixtures, equipment and articles of personal property (collectively, "Personal Property") in the Leased Property, and Tenant shall either cause Landlord to be named as an insured party under

such policies (without entitling Landlord to receive any loss proceeds thereof) or obtain the insurer's waiver of all rights of subrogation against Landlord with respect to losses insured under such policies. Landlord shall have no liability for any damages incurred to any of Tenants furnishings, fixtures, equipment and articles of personal property in the Leased Property.

Tenant shall provide to Landlord prior to commencing any demolition or other activities pursuant to this lease, certificate(s) of insurance evidencing the insurance required pursuant to this Section 25.

(b.) Recognized Insurance Companies All insurance provided for in this paragraph shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of South Carolina and shall be written on the standard policies of such companies and shall provide for no deductible in excess of $100,000.00 ($250,000.00 as to flood insurance, as applicable) if available at reasonable cost. Tenant shall be responsible for any deductible.

(c.) Landlord's Non-Liability, Tenant's Own Insurance Other than for loss or damage caused by or resultant from the gross negligence or willful misconduct of Landlord, Tenant hereby waives all right of recovery which it might have against Landlord, Landlord's agents and employees, for loss or damage to Tenant's furniture, furnishings, fixtures, equipment, chattels and articles of personal property located on the Leased Property, nor shall Landlord be liable for any business interruption, or injury to or death of persons occurring in the Leased Property, or in any manner growing out of or in connection with Tenant's use and occupation of the Leased Property or the condition thereof, notwithstanding that such loss or damage may result from the negligence or fault of Landlord.

Tenant shall advise Landlord promptly of the applicable provisions of such insurance policies and notify Landlord promptly of any cancellation or change therein.

All insurance carried by Tenant as to the Leased Property or as to any property located thereon or therein, whether or not such insurance is carried pursuant to this Lease, shall provide that the insurer waives all right of subrogation against Landlord with respect to losses insured under such policies.

26. INDEMNITY. Tenant is and shall be in exclusive control and possession of the Leased Property as provided herein, and Landlord shall not be liable for any injury or damage to any property or to any person happening on or about the Leased Property, nor for any injury or damage to the Leased Property, nor to any property of Tenant, or of any person contained therein except as a result of the gross negligence of Landlord or Landlord's employees, agents, contractors, licensees and invitees.

Tenant shall indemnify and save Landlord harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against Landlord by reason of:

(i) Any work or thing done in, on or about the Leased Property or any part thereof;

(ii) Any use, occupation, condition, operation of the Leased Property or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto or any occurrence on any of the same;

(iii) Any act or omission on the part of Tenant or any subtenant or any employees, licensees or invitees;

(iv) Any accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Property; or any part thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto; and

(v) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease, or recording of this Lease. The provisions of this paragraph shall survive the expiration or earlier termination hereof.

Nothing contained herein shall be construed as an indemnification for injury to persons arising as a result of the gross negligence or willful misconduct of the Landlord.

28. FIRE INSURANCE RATE AND REQUIREMENTS. Tenant agrees, at its own cost and expenses, to comply with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction and any similar body, and the insurance company insuring the building.

29. ACCRETED LAND EDUCATIONAL PROGRAMS. Subject to existing laws and restrictions as applicable to the accreted land, the Tenant and the Landlord shall jointly develop and implement educational programs for students in the accreted land. It shall be the obligation of the Tenant to pay the costs of implementing such plans as are mutually agreed upon by the parties. Such plans shall be developed prior to completion of the construction of the new school so that these teaching areas in the accreted land will be available for use upon occupancy of the new school.

30. ZONING ENFORCEMENT POWERS. The parties hereby agree that all enforcement powers of the Town of Sullivan's Island, as contained in the Zoning Ordinance of the Town of Sullivan's Island, shall apply to the Leased Property and the construction, operation, occupancy, and use of the new school as if the Leased Property were zoned in any zoning

category of the Zoning Ordinance. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to use any and all enforcement procedures of the Zoning Ordinance of the Town of Sullivan's Island on the Leased Property in its sole discretion.

31. ZONING. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to zone and to rezone the demised property. In the event of any conflict between the provisions of this lease agreement and the Zoning Ordinances of the Town of Sullivan's Island, the provisions of this lease plus the enforcement powers of the Zoning Ordinances shall apply, plus any new applicable provisions of the Zoning Ordinance. PROVIDED, HOWEVER, it is hereby acknowledged and agreed by Landlord and Tenant that for all purposes and in all respects the Leased Property shall be and is grandfathered under the Zoning Ordinances of the Town of Sullivan's Island (whether now existing or hereinafter enacted). To confirm and clarify by way of example only and not in limitation of the foregoing proviso, in the event of partial or full destruction of or damage to the school facilities constructed on the Leased Property by Tenant, provided that the plans and reconstruction, repair or replacement of the facilities necessary to restore such structures and improvements to what existed prior to the damage or destruction comply with the requirements set forth in this lease, the new structures and/or improvements shall be deemed in compliance, regardless of any rezoning of the Leased Property or any new applicable provisions of the Zoning Ordinances of the Town of Sullivan's Island.

32. LEGAL EXPENSES. If suit shall be brought or claim shall be made (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Property, and/or for the recovery of rent or any other amount due under provisions of this Lease, or because of any other covenant contained herein, and the breach is established, the prevailing party, in addition to all other sums and relief obtained, shall be entitled to all expenses incurred therefore, including reasonable attorneys' fees and costs.

33. TIMELINESS AND DEADLINES.

Time is of the Essence in all matters in this Lease Agreement.

34. WAIVER OF RIGHTS. No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder, or to insist on the other party's strict compliance with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

35. SECTION HEADINGS. The section headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no ay to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

36. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged into this Agreement. This Agreement may be changed or supplemented only by an instrument in writing signed by both parties.

37. ADDITIONAL INSTRUMENTS. The Parties agree to execute and deliver any instrument in writing necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever occasion shall arise including the execution of a short form memorandum of lease agreement which may be recorded at the Charleston County RMC Office by Tenant at its expense.

38. NOTICE. Any notices or demand required or permitted by law, or any provision of this Lease, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to the Town of Sullivan's Island, 1610 Middle Street, Sullivan's Island, SC 29482, or at such other address as Landlord may hereafter designated in writing to Tenant.

Any notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed to Tenant at 75 Calhoun Street, Charleston, South Carolina 29401, Attn: Superintendent of Schools, or at such other address as Tenant may hereafter designate in writing to Landlord.

39. GOVERNING LAW: ENFORCEMENT. This Agreement shall be governed by the laws of the State of South Carolina. If either party enforces the terms of this Lease by legal proceedings, the prevailing party in such proceedings shall be entitled to reimbursement from the other party to all reasonable costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the dated stated above.

Witness #1 Gerald A. Kaynard

Witness #2 Mary Jane Watson

Town of Sullivan's Island

BY: Michael Perkis

ITS: Mayor Pro Tempore
Town of Sullivan's Island
October 18, 2011

Witness #1

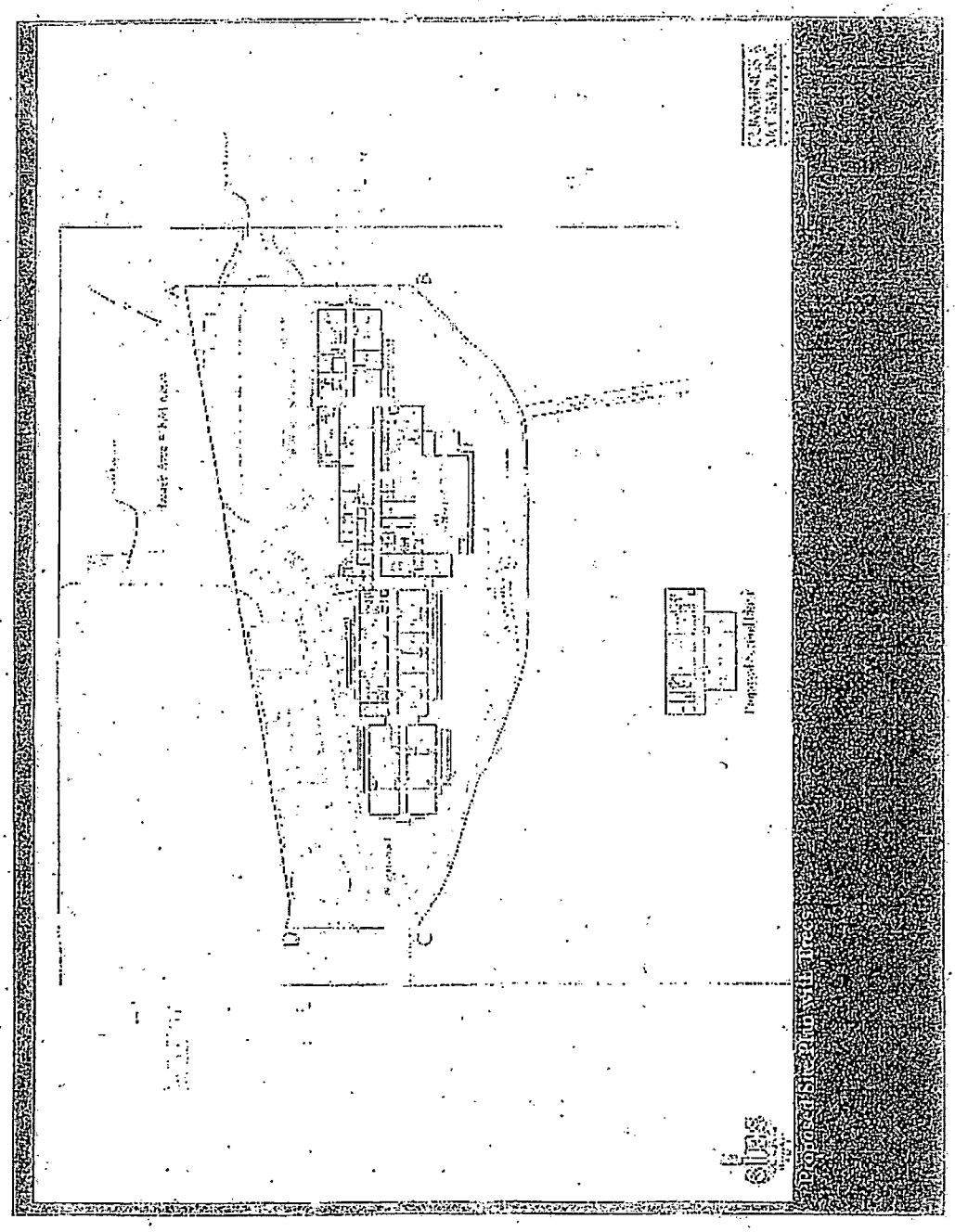
Witness #2

Charleston County School District

BY:

ITS: Superintendent of Schools

EXHIBIT A



TOWN OF SULLIVAN'S ISLAND

RESOLUTION

A RESOLUTION BY THE TOWN OF SULLIVAN'S ISLAND PLEDGING SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT TOWARD OPERATION OF AN ELEMENTARY SCHOOL ON SULLIVAN'S ISLAND

WHEREAS, the Charleston County School District has operated the highly successful Sullivan's Island Elementary School on Sullivan's Island for over 50 years; and,

WHEREAS, the Town of Sullivan's Island has contributed to the operation of that school through a long term no cost lease of sixteen acres of ocean front property; and,

WHEREAS, the members of Council recognize that the strength of the Town is found in its residents and the sense of community that is enhanced by a local school; and,

WHEREAS, a core component of a residential community is its local elementary school that will create a safe and trusted environment in which children can learn, socialize and personally grow while contributing to the Town; and,

WHEREAS, the members of Council view the school as a valuable asset of the Town and desire that the elementary school remain on the Island;

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of Sullivan's Island pledges its support and commitment to the Charleston County School District in the effort to maintain the school on Sullivan's Island; and,

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3069 • WWW.SULLIVANSISLAND-SC.COM

BE IT FURTHER RESOLVED, that the Town Council of Sullivan's Island pledges its partnership with the Charleston County School District to continue the proud tradition of excellence at Sullivan's Island Elementary School.

Resolved this 19th Day of January, 2010.

TOWN OF SULLIVAN'S ISLAND

Carl J. Smith, Mayor

Attest:

Ellen McQueeney, Town Clerk

Andy Benke, Town Administrator

CHARLESTON COUNTY SCHOOL DISTRICT

TO: Board of Trustees

FROM: Michael Bobby, Chief Financial and Operations Officer

DATE: August 15, 2011

SUBJECT: Sullivan's Island Elementary School – Town of Sullivan's Island LEASE

RECOMMENDATION: Approve lease as presented.

The material is submitted for: ☒ Action ☐ Information

☐ Open ☒ Executive

Respectfully submitted:

Nancy J. McGinley, Ed.D
Superintendent of Schools

Michael L. Bobby
Chief Financial and Operations Officer

N/A
J. Douglas Gepford, Ph.D.
Chief Academic Officer

N/A
William Lewis
Chief Operating Officer, Capital Programs

N/A
Cindy Bohn Coats
Chair, Audit & Finance Committee

☐ Item voted on and recommended for Board approval by the A&F Committee on _____

N/A
Elizabeth Moffly
Chair, Policy Committee

☐ Item voted on and recommended for Board approval by the Policy Committee on _____

Capital Projects

August 15, 2011

TOPIC:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

BACKGROUND:

On March 27, 2006 by Item 9.4 the Board approved the construction and budget for the New Sullivan's Island Elementary School. As part of the 2005-2009 Capital Building Program, CCSD Board of Trustees approved the advance design for a new Sullivan's Island Elementary School to design development phase. The Board of Trustees approval to replace the existing school versus renovations and additions to the existing facility came after schematic design of the renovation and addition project as well as the finalization of the seismic analysis. The estimate of that scope of work deemed the project un-executable because the value of the improvements exceeded 50% of the appraised value of the facility, thereby, requiring that all buildings must be upgraded to current building codes and FEMA requirements.

Because the original scope of work was deemed un-executable, CCSD Board of Trustees approved the construction of a new facility on the existing site utilizing reserves and construction savings from the 2005-2009 Capital Building Program. Prior to the Board of Trustees approving the replacement of the existing facility, it was requested by CCSD to the Town of Sullivan's Island that a "Memorandum of Understanding/Resolution" be given to CCSD stating they were in total agreement to extend the lease to allow CCSD to construct the new facility on the existing site (see attached Resolution of the Town of Sullivan's Island dated January 19, 2010).

Over the past several months Staff, Architect (Cummings & McCrady) and the Program Manager, (Cumming/SMG) have been working with the Town of Sullivan's Island to resolve, in advance, any potential issues the Town of Sullivan's Island could impose that would affect the design or construction of the new facility. Concurrently, CCSD Staff, CCSD's Real Estate Attorney (Clawson & Staubes), and C/SMG have been working with Town of Sullivan's Island Town Administrator to finalize the New Lease for the property.

On July 9, 2011, CCSD Staff, Architect, and Program Manager presented to Council, in Executive Session, CCSD's concerns with the draft proposed lease as submitted by The Town of Sullivan's Island.

The Town of Sullivan's Island noted CCSD's concerns and on August 3, 2011; CCSD received a revised draft lease addressing most all of CCSD's concerns noting only minor changes.

CCSD's Staff, Legal Counsel (Clawson & Staubes), Architect, and Program Manager have been successful in negotiating the final lease addressing both CCSD and The Town of Sullivan's Island concerns.

DISCUSSION:

The lease needs to be approved so the Architect can move forward with design and approvals. Also, CCSD needs to approve the lease in advance of The Town of Sullivan's Island formally approving at their August 16, 2011 Council Meeting.

RECOMMENDATION:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

FUNDING SOURCE/COST:

No additional funds are required.

FUTURE FISCAL IMPACT:

None

DATA SOURCES:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

PREPARED BY:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

REVIEWED BY LEGAL SERVICES

Matthew Moore, Clawson & Staubes

REVIEWED BY PROCUREMENT SERVICES

Lawrence Lutrario

ATTACHMENTS

1. Resolution of The Town of Sullivan's Island dated January 19, 2010
2. Lease

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
_____)

IN THE COURT OF
COMMON PLEAS
2012-CP-10-6830

MARTHA SMITH, KATHLEEN POST)
and WILLIAM POST,)
Plaintiffs)
vs.)
)
TOWN OF SULLIVAN'S ISLAND,)
Defendant)
_____)

TRANSCRIPT OF RECORD

MAY 15 & 16, 2014
CHARLESTON, SC

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR.

A P P E A R A N C E S:

J. RUTLEDGE YOUNG, ESQUIRE
JULIE MOORE RODE, ESQUIRE
ATTORNEYS FOR PLAINTIFFS

JOHN P. LINTON, JR., ESQUIRE
G. TRENHOLM WALKER, ESQUIRE
ATTORNEYS FOR DEFENDANT

SHARON VIZER,
SHARON D. JONES,
OFFICIAL COURT REPORTERS

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* * * P R O C E E D I N G S * * *

THE COURT: All right. Are y'all ready?

MR. YOUNG: Your Honor, we have -- before we get started, we have got some stipulations that were put in -- both parties have agreed to.

THE COURT: That's fine.

MR. YOUNG: And also we've got an additional exhibit, which there is no problem with us. I think we provided the Court with a notebook with copies of all the exhibits.

THE COURT: I have that.

MR. YOUNG: And for sort of mechanics, we plan to have the witness refer by tab as we go through this.

THE COURT: If everybody agrees -- I mean, that to me, it's liken to -- we can do it one of two ways -- or we can do it more than that. But what I've done typically, and typically when you have this many exhibits, it's not uncommon in a medical mal practice case to have the file -- and the file is quite voluminous -- and you mark the file as a joint exhibit. Is this a joint notebook? Is this a joint exhibit?

MR. YOUNG: We have agreed that most of them are. There's about eight that are joint and then most of the other ones are by consent.

THE COURT: Well, to me -- is it okay with your records for the tab reference, or do you want to separately mark the exhibit? As long as you reference the document as this notebook, then what we are talking about.

MR. YOUNG: Yes, sir.

THE COURT: Anything else that's referred to will be marked as a Plaintiff's or a defendant's exhibit. Let's make this entire -- it's a joint exhibit and you're simply going to refer to it as joint exhibit tab number 4, tab number 5. That way then everything is clear. We don't have any objections to any of it. We don't have to do anything to introduce it. It's admitted and it's available. Okay.

MR. YOUNG: Yes, sir, Your Honor. But there are about three -- maybe a half dozen exhibits that we are not --

THE COURT: Well, that's fine. Those will be treated independently, not as a part of -- I don't want it to be a part of this notebook.

MR. YOUNG: Yes, sir.

THE COURT: That way we can keep it straight.

MR. YOUNG: Then we'll need to remove them, because I think they are marked in there for identification.

THE COURT: Well, let's go ahead -- let's go ahead -- you are going to seek to offer them, is that what it is, and you have an objection to them?

MR. YOUNG: The other way around, with about three or four of them.

THE COURT: All right. Well, why don't we have them marked, and we can decide whether we are going to admit them or not.

MR. YOUNG: Yes, sir.

THE COURT: All right. We'll deal with that. That's fine. So they are already in here then?

MR. YOUNG: Yes, sir.

MR. LINTON: And, Your Honor, just to clarify each -- behind each tab, each is marked as a separate exhibit. It has an exhibit sticker on it.

THE COURT: So then I appreciate that and that's real nice, but for our purposes -- are they numbered sequentially?

MR. LINTON: Yes, sir. They are numbered joint exhibits 1 through ten. Plaintiff's exhibits 1 through 12. Defendant's exhibits 1 through 28.

THE COURT: That's fine. You can refer to it by the document, but I want it originally referenced so the court will be able to follow, because this notebook is going to remain intact. And if this has to be

reviewed, I don't want you to say, well Plaintiff's exhibit 1 because then they've got to read through the whole thing. Help them help me when you start referencing tab numbers, joint exhibit tab number 5. And then you can reference it, Plaintiff's exhibit whatever tab 5, and have the specific -- exhibit 5, it doesn't say -- I assume exhibit 5 means joint exhibit 5.

MR. YOUNG: Yes, sir, that's correct, Your Honor.

MR. LINTON: Yes, sir.

THE COURT: Okay. That's fine. But let's -- let's give them that for the record purposes, please. And because I'm 66 years old and I need it too for helping me find it too, so that's helpful.

MR. YOUNG: Then, Your Honor, the only other pretrial matter is -- I conferred with the other side, and I've requested that the witnesses be sequestered. They have an objection to that.

THE COURT: You know, why do we need the witnesses sequestered for? Is there anything factually in dispute in this case?

MR. YOUNG: I think there is one primary factual dispute about the interpretation of the zone.

THE COURT: Well, the interpretation is -- I

don't really, to be candid with you, so what. It's ultimately my interpretation, isn't it?

MR. YOUNG: I think so --

THE COURT: Well -- excuse me, I start the ball rolling. It's ultimately the interpretation of somebody in Columbia. So I understand how this process works. This is just step one.

MR. YOUNG: That's correct, Your Honor.

THE COURT: Okay. Thank you. I'm not going sequester the witnesses as there is no need to have that delay.

Let's take up another matter, because I have been advised of some witness issues. No problem taking those out of order. Be prepared to call your witnesses. We are going to keep this case moving, so I'm sure you are ready to do that. I understand you wanted to wait until they finished and didn't, and that's fine, Mr. Linton. But this Judge says you call your witness when we finish the Plaintiff's case today. Okay?

MR. LINTON: Yes, Your Honor.

THE COURT: Thank you.

MR. YOUNG: Thank you, Your Honor.

THE COURT: All right.

MR. YOUNG: Your Honor, the Plaintiff is ready

otherwise.

THE COURT: Let's go. I don't think we need any opening statements. I think I've already heard some things. I've had the benefit -- and thank you all for providing me with your pretrial briefs in advance. The issues are still pretty much what they were when I started. So I'll be happy -- you may proceed.

MR. YOUNG: Thank you. The Plaintiff calls Carl Smith.

THE COURT: Okay. And let me tell you all thank you for your -- sort of in limbo early about this. And I understand the inconvenience to witnesses and everybody else. But I have been saying for years there's no rhyme or reason that we can't -- when we have a courtroom available -- and I think Mr. Michel and Ms. Vizer here, but the -- clearly, I've been saying why in the world when court breaks down, don't we just keep -- send me some place else, we can try another case. You've made it happen. And I've been thinking there is no reason it can't if you just coordinate things and thank you all for doing that. I appreciate it. So we are using everybody's time effectively I think. Thank you. Thank you, I'm sorry To hold you up, sir.

CLERK: Raise your right hand.

CARL SMITH, after having been duly sworn, testified as follows:

THE COURT: And I thank Mr. Michel and all his hard work coordinating this as well.

CLERK: Give us your full name, sir, and spell your last.

MR. YOUNG: The court has been very accommodating to us as well. Very helpful.

THE COURT: I hope we all know, and I say this behind his back, I might as well say it in his presence. If you go across the state, we are very blessed and fortunate to have Ms. Armstrong who has personnel working for her that do such an incredible job and Mr. Michel is certainly one of those persons.

MR. YOUNG: Best in the state, Your Honor.

THE COURT: Absolutely. No argument with me over that.

DIRECT EXAMINATION BY MR. YOUNG:

Q. Mr. Smith, could you please tell us your name, please?

A. Carl Jennings Smith, S-m-i-t-h.

Q. And could you tell us a little bit about your background, your professional career and where you live?

A. I've lived on Sullivan's Island since 1974. I

design residential structures. I've been on council for 26 years, eight of those years as mayor.

Q. All right. And when were you first elected to the Sullivan's Island Town Council?

A. 1987.

Q. And how many terms did you serve on Sullivan's Island Town Council?

A. Well, I haven't calculated that, but every four years, so four into 26.

Q. All right. And you were mayor for eight years, correct?

A. Yes.

Q. And when did you resign from Town Council?

A. I didn't file for election last spring. And the election was held the second Tuesday of May and my term is up the end of June.

Q. Okay. And during your time on Town Council, did the Town -- were you familiar with how municipal government was operated on Sullivan's Island?

A. Pretty well.

Q. Yes, sir. During your time on Town Council, did Sullivan's Island adopt a Comprehensive Land Use Plan?

A. Yes, we did.

Q. And if you would turn -- do you have a copy of

the exhibit notebook in front of you? If you would turn to -- there's a section that says exhibit Plaintiff's, and it's tabbed number three, it's about this many couple inches there.

A. I have it.

Q. It's labeled as tab 2 A, Plaintiff's exhibit 2 A in the joint notebook that we have admitted as -- for the court's benefit as a joint exhibit in this case. Is that a copy of the 2008 Comprehensive Land Use Plan for Sullivan's Island?

A. Yes, it is.

Q. And while you were serving on Town Council involved in government on Sullivan's Island, was this Comprehensive Land Use Plan formally adopted by the Town of Sullivan's Island?

A. Yes, it was.

Q. And if you would turn -- what was the purpose of the Comprehensive Land Use Plan if you'll tell us, please?

A. Well, first of all, state statute requires that a municipality have a Comprehensive Land Use Plan and we follow that statute. The other point is to maintain, I think, the character of the island and we stipulate to it in the many instances as to why that is so.

Q. All right. And on the very first page, behind the cover page of the Land Use Plan, does it reference the enabling state statutes under which it was enacted?

A. Yes.

Q. And does the Comprehensive Land Use Plan for Sullivan's Island have a stated purpose that reflects the -- some of the things you just mentioned?

A. Yes, it does.

Q. All right. And do you recall who was involved -- were there any consultants or outside resources that the Town went to, to develop the Comprehensive Land Use Plan?

A. I think Council of Governments provided personnel to do that. We also in -- at Cooper & Associates do some work for us and we redid our zoning, residential zoning. And Synder & Associates before that did our architectural survey.

Q. Tell us, please, what -- who are Cooper & Associates and Synder & Associates, just in summary fashion?

A. Synder & Associates are experts in historical structures, historical properties. They, in effect, did a survey for us. The Cooper & Associates were consultants who pretty much looked at all of our zoning, residential zoning, and gave us suggestions on

how to improve that. And one of those things that they suggested was to have a Design Review Board.

Q. And what is the -- is there an organization on Sullivan's Island or a committee that deals with the Comprehensive Land Use Plan? Is there a government committee that does that?

A. The Planning Commission.

Q. All right. And is -- after the Comprehensive Land Use Plan was adopted, what happened next as far as the ordinances of Sullivan's Island are concerned?

A. Well, if they needed to be amended to reflect what was indicated in the plan, they would be amended.

Q. Well, when -- when did Sullivan's Island first adopt a zoning ordinance, if you know? And I direct your attention to tab 3 of the joint exhibits.

A. I believe that was 1977.

Q. All right. And what was the purpose of the zoning ordinance over on Sullivan's Island?

A. Well, again, it was a requirement once we became a municipality to have ordinances to live by, ordinances to govern by.

Q. All right. And was the zoning ordinance a result of the Comprehensive Land Use Plan that was adopted by Sullivan's Island?

A. The initial zoning ordinance?

Q. Yes, sir.

A. No, it wasn't. That was -- that came -- we came out of the gate with nothing so -- so -- Mark Tannebaum was the attorney at that time, and drew up the ordinances that we had.

Q. And then after the Comprehensive Land Use Plan, was the zoning ordinance amended or changed or updated?

A. I can't say specifically. I'm sure it was if it needed to be.

Q. If you would, look at tab 3 in the joint exhibits in the notebook in front of you, and tell me what that is, please.

A. Tab 3?

Q. Yes, sir.

A. The very first page?

Q. Yes, sir. Tab 3 is about -- I don't know -- I think it's a copy of the entire zoning ordinance, but I want you to look and confirm that.

A. Beyond the cover page?

Q. Yes, sir. On the cover page, what does the cover page reflect?

A. Attached is a copy of the Town of Sullivan's Island Zoning Ordinance, a certified copy of Ordinance on file, signed Gerald Henderson.

Q. All right. And on the very -- you'll have to turn in a page or two, past the table of contents I believe. And my question for you is, when was the zoning ordinance first adopted? Did you say 1977?

A. I believe that's correct.

Q. Okay. And at that time, was there a school on Sullivan's Island at the time the zoning ordinance was first adopted?

A. Yes, there was.

Q. Tell us the background of the school based on what you know about it.

A. Well, the -- the school on the existing site was -- property was granted by the state, which owned it at the time. And they granted a 99 year lease which I believe began in 1954.

Q. And that 99 year lease, we have been referring to that, would you look behind tab 10 of the joint exhibits. We call that the '54 lease, would that be a fair way to refer to it?

A. Yes.

Q. Because it was executed in 1954?

A. Yes.

Q. Do you see tab 10 there, Mayor Smith?

A. I have 10, uh-huh.

Q. Is that a copy of the 1954 lease?

A. I'll get back into it.

THE COURT: Would y'all approach please?

A. All I see is emails.

THE COURT: Hold on a second.

(WHEREUPON, a bench conference was had.)

BY MR. YOUNG:

Q. Mayor Smith, the zoning ordinance on Sullivan's Island, does it apply to the entire island of Sullivan's Island?

A. Yes, it does.

Q. Are there any areas on Sullivan's Island where the zoning ordinance does not apply?

A. I can't think of any except the federal property.

Q. All right. And the site where the Sullivan's Island school was located, has that been owned by the Town of Sullivan's Island?

A. It transferred from the state to the Town when we became a town.

Q. When was town incorporated?

A. I think it was '74.

Q. All right. And then the site where the school is being rebuilt, is that the same site that was originally leased to the Charleston County School District?

A. Yes, it was.

Q. All right. And that site is presently owned by the Town of Sullivan's Island as well, correct?

A. Yes.

Q. And, Mayor Smith, if I could direct your attention to the zoning ordinance, one particular section of it, the zoning ordinance that set up historic or overlay districts, can you tell us briefly how the zoning ordinance works as your understanding?

A. Well, my understanding is that we had set up principles for construction or limitations on lot coverage, height, pervious coverage, unpervious coverage, what can and cannot be in a district. What can be in a commercial district and what can't be in a residential district.

Q. As -- as Mayor of the Town and member of council for so many years, are you generally familiar with the height restrictions and so forth?

A. Yes.

Q. Could you speak to that briefly. What's the tallest building permitted on Sullivan's Island under the zoning ordinance?

A. Thirty-eight feet. Years ago, it could have been 40, but council chose to make it 38 feet.

Q. And does the Sullivan's Island Zoning

Ordinance also set forth a detailed and specific procedure for design review of all construction on Sullivan's Island?

A. Yes, it does.

Q. And has that procedure, as set forth in the zoning ordinance, been in place and been in use on Sullivan's Island prior to the execution of the current lease with the Charleston County School District?

A. Yes, it was.

Q. And tell us, please, what the historic overlay district is on Sullivan's Island?

A. I believe there are three historic overlay districts.

Q. All right. Well, can you describe for us, please, how that works in your understanding?

A. Well, they are -- they are regulated on what can and cannot happen. They -- the structure on a historic list, it cannot be demolished. It can be added to if granted by the Design Review Board.

Q. All right. I want to draw your attention only to one section of the zoning ordinance and then I'll move on. The Zoning Ordinance section 21-99, could you read that for us please?

THE COURT: This is tab 3?

MR. YOUNG: Yes, sir, Your Honor. And I can

help you if --

THE COURT: That's all right. I just wanted -- you handed him -- that's fine. I don't have any problem, I just wanted -- you were handing him the document that was contained in tab 3, joint exhibit?

MR. YOUNG: Yes, sir.

THE COURT: Thank you.

BY MR. YOUNG:

Q. Section 21-99, Article 11, found on page 52 of the Zoning Ordinance; can you read that for us, please, Mayor Smith?

A. Sure. "The requirements, provisions and purposes of this Article apply to all property owned by the Town or any other public agency. Provided, however, designation pursuant to this Article shall not effect the validity of prior actions of Town Council approving plans, programs or authorizations for public trust, agencies or authorities of the Town without an express amendment of such plan, program or authority."

Q. By the terms you just read of section 21-99, does the historic overlay district in Article 11 apply to all property owned by the Town?

A. I believe it does.

Q. Is that the way that the ordinance reads?

A. I think so.

Q. Okay. And, Mayor Smith, now I want to ask you some questions about the specifics of this case, the Sullivan's Island Elementary School and the issues surrounding that. Can you tell us please what your involvement was in the demolition of the old school and just walk us through how the process started. Why -- why was the old school demolished?

A. Well, initially there was a 10 million dollar grant to rehab the school and add on to it. The County then had decided that there were seismic issues with the structure and moved towards building a new school.

Q. All right. And after those seismic issues were discovered, were the children moved out of the school on Sullivan's Island?

A. Not immediately.

Q. Were they eventually?

A. Pardon me?

Q. They were eventually, correct?

A. Yes, they were.

Q. For safety issues, correct?

A. Yes.

Q. And then what happened next?

A. Well, there was an initial meeting, I think with Andy Benke, myself. I don't know if Bill Lewis was there or not --

Q. Let's slow down a little bit. What was the initial meeting about and where was it, if you remember?

A. It was in Andy Benke's office in Town Hall.

Q. And who is Andy Benke?

A. The Town Administrator.

Q. Okay. And when was this first meeting, the best you remember?

A. I can't give you an exact date.

Q. And who was at this first meeting as best you remember?

A. I know Andy and I were there.

Q. On behalf of the Town, correct?

A. Yes.

Q. Was anybody else besides you and Mr. Benke there on behalf of the Town?

A. I'm not sure if it was Ed Strack or Bill Lewis or -- I don't think Jerry English was, the architect.

Q. Well, Mr. Lewis and Mr. English would not have been on behalf of the Town, correct?

A. No.

Q. I limit my question just for the Town, just you and Mr. Benke, correct?

A. Yes.

Q. All right. And then who else was at the

meeting?

A. Well, again, you mean from the Town?

Q. No, sir. Other than the Town people.

A. I say it may have been Lewis or Ed Strack or -- I think that's it from the county.

Q. Okay. Now, who is Mr. Strack?

A. I think he's the building superintendent. It has something to do with the building for Charleston County Schools.

Q. For the school district?

A. Yes.

Q. All right. So Mr. Lewis, Mr. Strack, yourself and Mr. Benke were at the first meeting. And what did y'all discuss at the first meeting?

A. Well, we understood that the county wanted to build a new school. In order to allocate the funds, they had to have a lease that extended beyond the existing one, which would terminate in 2053. They wanted, I think, 75 years.

Q. All right. And were there any other specifics discussed at that first meeting that you remember?

A. All I recall was the number, 500 students. No mention of the square footage.

Q. All right. Tell us what you recall about the number 500 students and why that came up?

A. It just said -- you know, it said it would be for 500 students, you know. You know, at that point, I couldn't say anything otherwise. I couldn't say, well, forget it. We are not interested. I needed more information.

Q. Okay. And who -- who said that the school would be for 500 students?

A. Somebody representing the district, county district.

Q. Either Mr. Lewis or Mr. Strack just mentioned?

A. (Nodded affirmatively.)

Q. You have to answer out loud for the court reporter.

A. Yes. Yes.

Q. And then, Mayor Smith, what happened next in the progression of the lease that was discussed at this first meeting? How did that progress?

A. I think shortly after that, Council sent the resolution to the School District. And all they did was say that we supported a new school on the island. We didn't mention square footage. We didn't mention numbers of students. We supported the school. And I supported that.

Q. And you signed that resolution, correct?

A. Yes.

Q. And that resolution is among the exhibits we've introduced in this proceeding, correct?

A. Yes.

Q. All right. But the resolution did not speak to the specific number of students and did not speak to the square footage of the school, is that correct?

A. That's correct.

Q. And at your first meeting, were the design specifics available for the forthcoming school on Sullivan's Island?

A. No.

Q. Were they discussed at all in your first meeting?

A. No.

Q. All right. Now, how did the Town of Sullivan's Island proceed to negotiate the lease, which is also an exhibit that we have introduced here, the ultimate lease that was signed in October of 2011?

A. Initially, it was our Town attorney, Larry Dodds, Jerry Kaynard, our councilman. I -- I -- you know, later on, I can't give you times, but it became Jerry Kaynard primarily involved in the lease negotiations.

Q. Were you actively involved in the lease negotiations with the Charleston County School

District?

A. No, I wasn't.

Q. All right. How was the progress of the negotiations between the Town of Sullivan's Island and the Charleston County School District reported to the public, if at all?

A. It was always stated that because it was a contractual matter, it would be executive session. So no information was given to the public.

Q. During the lease negotiations, is it fair and accurate that information from the Town of Sullivan's Island was not shared with the public about the progress of the negotiations and the specifics of the lease?

A. Not that I can recall.

Q. Okay. And is it true that Mr. Kaynard was the primary negotiator on behalf of the Town of Sullivan's Island, Councilman Jerry Kaynard was the primary negotiator on behalf of the Town of Sullivan's Island of the new lease, which is also an exhibit?

A. In the later parts of the negotiation, yes.

Q. Who was involved at the beginning in addition to Mr. Kaynard?

A. The town attorney, Larry Dodds.

Q. Okay. And as the lease was drafted, when was

the first time that you, as mayor of the Town of Sullivan's Island, were provided with a copy of a draft of a lease?

A. I can't give you a specific date. It was certainly late in the process.

Q. Do you recall whether the lease was provided to you a mayor of the Town of Sullivan's Island, before it was made publicly available to the Charleston County School District on August 15, 2011?

A. It may have been. I just can't recall.

Q. Okay. When the lease was -- when you did first see the lease, did you publicize its contents to anybody out on Sullivan's Island? What was the process for involving the public in the content of the lease?

A. I was adhering to what we were told, but still it was contractual lease negotiations.

Q. What kind of hearings were you at where you were told things about it?

A. Well, it was just hearing that from Council. I guess from Jerry Kaynard, from Larry Dodds.

Q. Okay. Councilman Kaynard and Mr. Dodds, when would they report to Council, tell us how they would report to Council about the progress of these lease negotiations?

A. It would have been at regular town meetings or

workshops.

Q. Would it have been in the open sessions of town meetings or would it have been in the executive session?

A. Executive sessions.

Q. And are the executive sessions open to the public?

A. No, they are not.

Q. Are there any minutes made of the executive sessions?

A. No.

Q. In conjunction with the lease, did the Town of Sullivan's Island conduct any written traffic studies or other impact studies?

A. Not that I ever saw. I would have thought DOT would have given us something, but I never saw an official document from them.

Q. Did that ever become a topic for discussion during the lease negotiations, whether any impact studies had been done?

A. It was a concern, but I don't recall a demand that we had -- have a future document.

Q. When you say it was a concern, what do you mean? Did you raise it? Did you discuss it?

A. I think pretty much everybody was concerned at

some point about what impact that traffic would have on the island.

Q. During the lease negotiations, were any alternative sites on Sullivan's Island considered?

A. There were.

Q. And what sites were considered?

A. One site was on the playground between the tennis courts and the fitness center next door, which is now a soccer field or lacrosse field. The Presbyterian Church property -- or property near the Presbyterian Church, Sunrise Presbyterian Church was also considered, but ruled out.

Q. All right. And what was the result of that? Why were those sites not suitable, if you know?

A. There were issues raised on the playground property about the proximity of the sewer plant. Apparently that wasn't a problem in Mount Pleasant on two occasions, but nonetheless, those issues were raised.

Q. What two occasions are you referring to?

A. Mount Pleasant Academy and the new Whitesides.

Q. Are what?

A. Elementary schools in proximity to sewer plants.

Q. Was there any discussion that you were made

aware of, about exempting the school from the existing zoning ordinances on Sullivan's Island?

A. In the -- early-on there was a discussion about should we create an overlay district for schools or go through the zoning process, or put all the conditions in the lease rather than -- than take the time. And I think that was -- my thought was -- concern was, you know, that the school was pushing to get this thing done as quickly as possible. And they thought the process of going through the planning, public hearings and then approval of the planning commission, votes from Council was too lengthy and too involved.

Q. When you say "they", who are you referring to?

A. That would be Council and the school district as well. You know, the school district was -- was certainly through some parent organizations, who were pushing to get this thing done quickly.

Q. Well, for purposes of reference, tell us what parent organizations you're talking about?

A. I forget, Sullivan's Islanders for Elementary -- some organization. I think Lauren Ziff was primary in that.

Q. Okay. And was there ever any request made to the Charleston County School District to voluntarily

comply with the design review process outlined in the ordinances of Sullivan's Island?

A. I don't recall that.

Q. All right. And then over on Sullivan's Island, I'm going to move on to the referendum itself. Had there been referendums in the past on Sullivan's Island while you were mayor or on Town Council?

A. While I was mayor, there was a referendum for the water and sewer system moved -- in other words, there was an issue about whether we should send it to Mount Pleasant. And the town residents voted down moving it to Mount Pleasant.

Q. Well, let's -- let's slow down. What is a water referendum for those of us who don't know?

A. It's -- well, it was -- actually, I don't know if we had gotten water from CPW at that time or not. But -- but the issue was to send everything to our -- whole process to Mount Pleasant and streamline it, I guess. Our concern -- or mine specifically was, we are allowed a little over 900 tabs on the island. And if we had gone to Mount Pleasant or if we went to Mount Pleasant, that is something that could go away. And then you could get pressure to subdivide the lots and that's been a strong, strong point all along, that lots not be subdivided unless it's a half acre.

Q. How many residents are on Sullivan's Island?

A. Around I think 2,100, something like that.

Q. Excuse me?

A. 2,100, I believe. Something like that. Around 1,800 voters.

Q. On the waste water, the prior referendum you just described, was it -- what was the reaction from the public over there on Sullivan's Island about that issue?

A. Say that again please.

Q. Yes. What was the reaction from the public on Sullivan's Island, the residents, about the waste water issue that led to -- how did that referendum come about?

A. Well, there was concern about that very issue. We've -- always through the years, we wanted to be independent. We considered ourselves islanders. I've always thought that was pretty -- pretty specific, that we be islanders and independent. And if you start giving away your infrastructure, you're not so independent anymore. So if we went to Mount Pleasant now or had we done it back then, if Mount Pleasant wants to do capitalization projects, then you're part of it.

Q. How was the referendum -- mechanically, how

did the referendum happen when -- was it presented with certified signatures?

A. I believe -- and I may be incorrect -- but I believe that Town Council initiated that because they knew it was an issue that -- it was of concern.

Q. And was it put to a public vote?

A. Yes, it was.

Q. And what was the outcome of the public vote?

A. It was a close vote, but it was against going to Mount Pleasant.

Q. Against moving the water and sewer to Mount Pleasant?

A. Yes.

Q. All right. And then was there another referendum during your public service on Sullivan's Island?

A. The referendum with the Ben Sawyer Bridge. There were two. There was an advisory referendum and then there was a mandatory referendum.

Q. And tell us why those came about and how that process worked?

A. Again, there were -- and I'm not so sure they would pass today -- but back then, us islanders were concerned about maintaining the character of the island. And a four lane fixed span bridge shuffling a

lot of traffic into Sullivan's Island, through Sullivan's Island to Mt. Pleasant, which is not something we wanted.

Q. And at the time, there was no Isle of Palms Connector, correct?

A. That's correct.

Q. All right. And then so how did the referendum, did that one work? Was it initiated by Council or was it initiated by signatures from voters?

A. Residents.

Q. All right. And was it put on the ballot?

A. Yes.

Q. And what was the outcome of that vote, if you remember?

A. They were close votes, both times.

Q. And with the Ben Sawyer Bridge, what was the issue, a fixed span bridge or replace the old bridge?

A. Yes. DOT wanted to build a four lane fixed span bridge. As I say, they weren't talking about the Isle of Palms Connector, so that would have been the primary bridge to the islands.

Q. Okay. And when those items were put on the ballot, what was the expense associated with having those referendums handled as best you remember; was it substantial?

A. I -- I don't know. It had to be minimal.

Q. What does it cost for a normal election or how does the normal election process work for the 2,100 voters or so over on Sullivan's Island?

A. I've never been involved in the mechanics of it. I can only say personally --

Q. Just generally what you know about it.

A. You know, I've spent very little on elections, so.

Q. Well, can you tell us, please, how many polling places there are, for example?

A. There is one polling place.

Q. And how many poll workers are there? Less than five?

A. Yeah. Less than five.

Q. All right. And is the process 9:00 to 5:00 or 7:00 to 7:00 or something, one day?

A. Yes.

Q. And with these prior referendums, was there any unreasonable costs associated with putting those referendums on the ballot?

A. I don't think so. I think they were important issues to the island.

Q. Okay. And then with this now, I want to move to this particular -- the referendum that's the subject

of this lawsuit. The -- how did this referendum first come up?

A. There was initially an -- or a petition for Council to reconsider. And I forget the wording of it. And that was sort of put aside by Council.

Q. Excuse me, if you would. Let me do a little bit of background. When -- when was the lease first -- there were three readings of the lease to the -- to the public at Town Council meetings, correct?

A. Right.

Q. And those were in August and September of 2011, is that right?

A. I think so.

Q. Okay. And then at that time, is that the first time that the public was provided with the details of the lease including its -- its design review provisions in paragraph 10?

A. To my knowledge, yes.

Q. Prior to -- prior to the public disclosure of the lease to the residents of Sullivan's Island, had any of the details been shared with the public?

A. Not that I know of.

Q. Had any of the details been shared with the public about how the new building would be reviewed for its design and its compatibility with the land use plan

in the existing ordinances on Sullivan's Island?

A. No.

Q. All right. And after it was read to the public, it went through the requisite three readings, correct?

A. Yes.

Q. All right. And so that brings us to roughly October of 2011. And I want you to walk us through what -- what happened or what was going on, what were your constituents telling you and how did this referendum come about in October of 2011?

A. I believe the residents who had signed the initial petition felt like they weren't being listened to.

Q. Let's address that first. Prior to the official petition, what happened? There was -- there was one that came out in September, correct, and it's an exhibit in here?

A. Yes.

Q. We call it the initial petition?

A. Yes.

Q. It's not certified or anything, right?

A. Right.

Q. Tell us about that. What was that process? And we'll have a witness in a minute that will go into

more detail, but generally.

A. They -- they got the -- the signatures were on it and they presented it to Town Council.

Q. And what was the substance of it? What was it -- what was it asking for?

A. I honestly can't tell you. It's been so long since I saw that.

Q. All right. It's an exhibit. It speaks for itself. But it was asking Town Council to look at the impact of the school and the designs of the school and what it was going to mean for Sullivan's Island, correct?

A. Right.

Q. And it was signed by several hundred residents or a number of residents?

A. Yes.

Q. All right. And it was presented at the Town Council meeting in September of 2011?

A. Yes.

Q. These Council meetings have an open session, correct?

A. Yes, they do.

Q. And anybody can come in and say anything, right?

A. The first 20 minutes are allocated for general

comments.

Q. All right. And at the September 2011 meeting, someone came in with this written petition that we have as an exhibit, that we call the initial petition, right?

A. Yes.

Q. All right. And what did Town Council do -- what did y'all do as a result of that sort of handwritten petition with the signatures?

A. Nothing.

Q. All right. And then what happened next at the October meeting? Why was the October meeting going to be important as it pertains to the lease, the finalization of the lease with the school district?

A. Well, as you indicated, we had three readings of the ordinance for the lease. I abstained from the first vote and voted against it on the final two votes. We knew that -- Council knew that we had received a certified petition for a referendum before the -- I think that day -- certainly that day or the day before that Council meeting. That we had, you know -- that it existed. And so -- so I asked for a motion from Council to defer ratification until a referendum was held. And I got, you know, no motion for deferral.

Q. All right. And the petition referendum, there

are tabs 1 and 2 of the joint exhibits in front of you, correct? If you look at that big black notebook. I'll take that back from you. It's at the very front, Mayor Smith, tab 1 and tab 2 is copy of the Town Clerk -- let's look at tab 1 first. Who is Ms. Ellen Miller please?

A. She's the Town Clerk.

Q. And on October 10, 2011, as reflected on tab 1, did she receive a copy of the petition?

A. Yes.

Q. And then at tab 2, is that a copy of the referendum that was presented in October -- October 10th of 2011?

A. It appears to be so.

Q. And we have the meeting minutes from -- tell us how the Town Council keeps the minutes at these meetings? We have a number of them as exhibits.

A. Minutes are recorded -- I mean the meetings are recorded and Ellen, the Town Clerk, then commits those to writing.

Q. Ms. Miller converts the audio recording into a summary of the minutes?

A. Yes.

Q. All right. And on October 18th, at the regularly scheduled Town Council meeting, did you make

a motion or ask -- call for a motion about acting on this referendum?

A. I asked for a motion to defer the ratification until after a referendum was held.

Q. All right. And at the October 28, 2011 meeting, was that when the Town Council was going to sign the lease that had already been signed by the Charleston County School District?

A. I believe so.

Q. All right. And did you sign the lease as Mayor of Sullivan's Island on that day?

A. I did not. For some reason, the wording said mayor or mayor pro tem shall sign that lease, instead of just the mayor.

Q. All right. With -- with the referendum, what happened -- what did Town Council do after receiving that first referendum -- and then mayor pro tem was Mike Perkins, correct?

A. Yes.

Q. And on October 18th, Mayor Pro Tem Mike Perkis signed the lease with the Charleston County School District on behalf of the Town of Sullivan's Island?

A. Yes, he did.

Q. And that had the support of everyone on Council except for you, correct?

A. That's correct.

Q. All right. And what happened next with the referendum? What -- what -- were the people who spoke out, did they have questions or how did the Town Council react to the referendum in summary fashion?

A. Well, I think everybody knew that the law states you can't have a referendum in less than 30 days -- or it has to take place in over 30 days or less than a year, or something like that -- 30 days to a year that you have to hold that referendum. And so the folks who had signed the petition for the referendum, couldn't do anything legally until that year was up. And Council wasn't -- doesn't do anything about it that I knew of.

Q. All right. Was it discussed? Did Council seek the advice of lawyers about what to do with the referendum or the Town lawyer?

A. They could have, I -- by that time, I was pretty much at odds with my Council. There were occasions after town meetings that they would -- I would leave and they would still be there at the table. So I don't know what they talked about.

Q. But -- but during the -- after the lease been signed and the referendum had been presented, by -- it was over 200 signatures, correct?

A. Yes.

Q. There's no question that it was over 15 percent of the registered voters on Sullivan's Island, correct?

A. Yes.

Q. All right. After that had been presented to Town Council, I assume you must have been privy to some conversations about what to do with the referendum on the Town Council side?

A. Well, I mean there was. Attorney Dodds suggested that we go for a summary judgment, that would be the honorable thing to do. Then it became a question of who would represent a group that really had no name or leadership. They were citizens who were concerned, but -- and I don't know the legalities of that, but four people did say they would be served and that was denied for legal reasons.

Q. Let me try to take it one at a time. Did the Town Council ever consider adopting the referendum?

A. No.

Q. All right. Did the Town Council ever consider putting the referendum to a public vote?

A. No.

Q. Did y'all have discussions about that?

A. Not that I recall.

Q. All right. Did the Town Council ever consider filing a lawsuit to determine whether the referendum was valid or invalid?

A. If the summary judgment is that, that would be the case. I don't know if that's a lawsuit.

Q. Well, let me -- let me walk you through that portion of it. After some period of time, what did the Town do next as it pertains to the referendum? They filed a lawsuit in Circuit Court in February of 2012? It's also an exhibit, is that true?

A. Yes.

Q. All right. And what do you remember about why that lawsuit was filed? What was the purpose from the Town of Sullivan's Island's standpoint of filing the lawsuit?

A. I suppose to resolve the issue quickly if possible.

Q. Had someone determined that there was a problem with the referendum? Why wasn't anything done about it?

A. Well, one Council member said immediately it was defective. And I'm not an attorney to -- to review something like that, to say it's defective or not.

Q. And who was that Council member?

A. Jerry Kaynard.

Q. The person who had negotiated the lease with the Charleston County School District?

A. Yes.

Q. And he reported to Town Council that the referendum was defective. Did he say why?

A. I don't recall any specifics. I'm sure he had some -- some reasons.

Q. All right. Other than Councilman Kaynard, did anyone else report to Town Council that the referendum presented by the citizens was defective or invalid or anything to that effect?

A. I think everyone just yielded to Councilman Kaynard's opinion.

Q. All right. And then with the lawsuit, what do you remember about -- happening with the lawsuit? We have minutes. It was decided that it was going to be pursued, correct?

A. Yes.

Q. And why was it pursued? Was that in consultation with counsel for the Town?

A. Tell me again, your process there.

Q. Yes, sir. In deciding what to do with the referendum, did y'all seek the advice of lawyers?

A. We --

Q. Including Mr. Dodds and Mr. Walker?

A. And Trenholm Walker and Larry Dodds.

Q. Representing the Town of Sullivan's Island, correct?

A. Yes.

Q. And they were engaged to review the -- what to do with the referendum, is that true?

A. Yes.

Q. All right. And then as a result of their advice, what did the Town decide to do, if anything?

A. Nothing.

Q. But the Town filed a lawsuit, right?

A. Yeah. But the summary judgment, yeah.

Q. And then what happened with the lawsuit, did the Town eventually decide to drop it?

A. I don't think anybody decided to drop it. There was an issue that -- of who could represent -- as I say, this group that had really no name or leadership, but it seemed to me that the Town attorneys were saying they had to have somebody to step forward as part of that group. And the concern of the group was that they would have to hire attorneys to do that. And they just wanted to volunteer to the process.

Q. The petition was signed by more than 200 individual people, correct?

A. Yes, yes.

Q. Could any of those individual people have been named as a Defendant in the lawsuit?

A. I don't know the answer to that. Four people volunteered to be.

Q. All right. So the suit was filed against a group called Islanders For a Smaller School, correct?

A. I think that's one of the names they used, yes.

MR. YOUNG: Well -- okay. It's in an exhibit, Your Honor. And the court has got the records of it of course.

BY MR. YOUNG:

Q. Through minutes from the Town Council meeting, ultimately did the Town Council decide to withdraw the lawsuit and stop the pursuit of any judicial ruling on the validity of the referendum?

A. I can't recall. I think -- I don't think they did anything further than that. They were just -- you couldn't get, again, past that issue of who is representing that group.

Q. You mentioned several people stepped forward and volunteered to be served with the lawsuit, is that correct?

A. Right. Right.

Q. But we've gotten these as well, do you recall

who those people were?

A. Might have been Fred Wszolek.

Q. Were three of them the Plaintiffs in this action, Ms. Kathy Post, Mr. Will Post and Ms. Martha Smith?

A. I believe so.

Q. In addition, did Mr. Vince Graham offer to step forward and be served?

A. And Fred -- I can't pronounce his last name -- Wszolek. It's in the record.

Q. All residents of Sullivan's Island?

A. Yes. Yes.

Q. With the exception of Mr. Graham, all residents who had signed the petition personally, correct?

A. Right.

Q. And then after the lawsuit was withdrawn and the construction of the school began, tell us please what the design review process was that has taken place to date?

A. Well, Council chose not to use the DRB, the Design Review Board for the process and made themselves --

Q. Let me slow down a little bit. The DRB -- tell us just in summary fashion how that works? Does

it have regular meetings and so forth?

A. It has regular meetings. It has a board that the zoning administrator or the building inspector will present a project to that board. And then they review it and vote on it if it's appropriate or not. And they have allowances, I think up to 25 percent, to grant issues on it.

Q. Is it true that all of the detailed procedures for the Design Review Board are set forth in the zoning ordinance?

A. Yes, they are.

Q. All right. And among other things, does the Design Review Board prohibit elected officials from serving on the Design Review Board?

A. It doesn't -- I don't think it specifically -- but as I recall, before I was on Council, the Town Council used to sign off on a set of plans.

Q. On -- on the Design Review Board, are elected --

A. No, there are no elected officials on the Design Review Board.

Q. All right. And who is the chairman of the Design Review Board or who has been?

A. Pat Ilderton.

THE COURT: Who -- Pat who?

A. Pat Ilderton.

BY MR. YOUNG:

Q. He's a respected builder over on Sullivan's Island?

A. Yes.

Q. And throughout the tricounty area?

A. Yes.

Q. He's a resident of Sullivan's Island?

A. Yes, he is.

Q. And the Design Review Board is constituted of seven members, correct?

A. Yes.

Q. All right. And how often does it meet?

A. Once a month.

Q. All right. Is the public invited to attend those meetings and participate in those meetings?

A. Yes.

Q. And does the Design Review Board have a whole host of forms and things that the applicants have to complete and submit, so that the specifics of any particular design on Sullivan's Island could be reviewed?

A. Yes, they do.

Q. And the process, once this lease was signed and this new school was built, was a similar process

put into place?

A. No.

Q. What was the process that was used for the Charleston County, the new school building?

A. Well, Council -- Councilwoman Hartley Cooper was chairwoman of the Building Construction Committee, as they called it then. And she would hold meetings, I think, perhaps Steve Herlong was invited to be there, as well as Pat Elderton. I'm not sure what members of Council would have attended. But there was no formal process as there is with the Design Review Board.

Q. Okay. For example, Councilman Cooper's committee, does it have written bylaws like the Design Review Board does?

A. I don't think so.

Q. Was it created by the enabling statutes from South Carolina that -- for example, provide a whole procedure for alternative dispute resolution for aggrieved citizens?

A. I don't know of any. And certainly if you have elected officials doing things that they shouldn't be doing.

Q. All right. As a practical matter, did you go to any of these meetings and do you know what happened at any of them?

A. I didn't go to them because I objected to them.

Q. All right. And why or what impact is this handling of the referendum, why is this an important issue for Sullivan's Island?

A. Well, I think the same issue as the previous two referendums, it was a very important issue for the Town. It was the hugest -- the largest structure ever built there, was about to be built with impacts that we've never seen before. I thought that was very important to all the residents having -- have an opportunity to weigh in on it.

Q. Well, there's no question that the school has been largely completed or almost complete, correct?

A. Pretty much.

Q. All right. And the referendum that was presented by the citizens of Sullivan's Island what, if anything, was ever done with it other than the Council declaring it to be invalid?

A. That's the only thing I know.

Q. And if the Council is able to declare a referendum invalid, would that have a potential -- would that have a negative precedent for the future government on Sullivan's Island and future referendums on Sullivan's Island?

A. I think it would. I mean, that is a democratic process that we have, that -- a right to a referendum. And if you have a Council that just disregards referendums and petitions, certified petitions, what kind of Council is that? What kind of government is that?

Q. And is that what happened in this case, the Town Council independently decided this referendum has no validity?

A. Yes.

Q. And is that what the declaratory judgment in this suit seeks, is a declaration that Town Council lacks that authority?

A. Yes.

MR. YOUNG: No further questions. Please answer any questions from opposing counsel.

THE COURT: Cross examine if you have any questions.

CROSS EXAMINATION BY MR. LINTON:

Q. Good morning, Mayor Smith.

A. Good morning.

Q. The school site is not in the single family residential district of the zoning ordinance, is it?

A. It is surrounded by the single family residential district.

Q. But it is not in that district, is it?

A. I don't know what it is.

Q. You don't know what district it's in?

A. It's -- it's a piece of property that's laid out just as the park -- I guess the R C 2 1 areas are both nondesignated. But -- but it is not a residential -- it's surrounded by a residential district.

Q. Do you know what district it's in?

A. No.

Q. You mentioned an initial petition, which is an exhibit, does that initial petition put forth any ordinance or ask that anything be put on a ballot?

A. That was advisory.

Q. You mentioned four people offering to come forward to accept service of the first lawsuit that was filed against --

A. Yes.

Q. -- Islanders for a Smaller School?

A. Yes.

Q. None of those four people offered to accept service for the organization that was sued, did they?

A. Again, that's -- that's cloudy in my mind of what -- what was being requested. And, again, I think they were concerned about having to hire an attorney

and a great cost in doing so.

Q. And that concern is why they state that they would not accept service for the group that was part of the lawsuit, correct?

A. But I think those people did volunteer to be served. And, you know, Trenholm and Larry can tell you how that came about, but it didn't -- it wasn't acceptable so -- apparently.

Q. You talked about an initial meeting that you had with the school district, and a mention of the school would be 500 students?

A. Yes.

Q. Was that communicated to you from the school district as a minimum number of students that any school would be built for?

A. The number 500 was all that was given, didn't say minimum maximum.

Q. Did you understand it to be a minimum?

A. I assumed it to be 500.

Q. And you had a second meeting with the school district as well, correct?

A. Yes.

Q. Who was at that meeting?

A. If it's the one I'm thinking of, Fostberg (ph) was there, the engineer. Jerry English, Andy Benke,

Randy Robinson, the building inspector and myself.

Q. Was Dr. McGinley at that meeting?

A. I don't recall her being at that meeting.

Q. Did you -- have you ever met with Dr. McGinley?

A. Yes.

Q. Has she ever told you that the school district would never build any school for less than 500 students?

A. There was a meeting that Dr. McGinley came to -- I think Andy was there, Andy Benke, the Town Administrator, myself. And I'm not sure if anybody else. But she was -- she was concerned -- it was a morning meeting. And she concerned about the issue of would they have to purchase a ladder truck to meet the fire codes. And that -- just costs like that. There was -- I did have another meeting with Dr. McGinley in her office, but that was talking about the efforts of the whole district in the East Cooper area, all the way up to McClellanville.

Q. Did she tell you at that meeting that the school district would not build any elementary school for a capacity of less than 500 students?

A. I cannot recall Dr. McGinley personally telling me 500. Maybe she did, but I don't recall.

Q. Is that the meeting that was with the mayors of some other local towns?

A. Yes.

Q. Let me see if I can refresh your recollection.

MR. LINTON: May I approach the witness?

THE COURT: You may.

BY MR. LINTON:

Q. Is that your notes and your handwriting?

A. Yes, they are.

Q. A couple of lines down, where it says written "Dr. McGinley colon", you've written a quote that is attributed to her. What does that say?

A. It says "schools must have 500 students to" -- something -- "new ones".

Q. Looks like "build"?

A. Must be build, yes, cut off.

Q. Does that refresh your memory?

A. Yes, it does.

THE COURT: Is that an exhibit?

MR. LINTON: No, no, sir.

THE COURT: Let's have it marked for identification purposes, so we can have it. He's referred to it, so it needs to be a part of the record, please. It's not admitted, but just for purposes -- so that we know what he's looked at. So you need it

marked Defendant's Exhibit -- what do you want to make it?

MR. LINTON: It would be the next one, Your Honor, which would be 29. I've already got 28.

THE COURT: That's fine. Defendant's 29 for ID only.

(Defendant's Exhibit No. 29 marked for identification.)

THE COURT: Excuse me for interrupting.

BY MR. LINTON:

Q. Mayor Smith, was there a second resolution --

THE COURT: Hold on just a second. Thank you.

BY MR. LINTON:

Q. Mayor Smith, was there a second resolution supporting the school?

A. Yes, there was.

Q. Would you turn to Defendant's Exhibit tab 5?

A. This would be the minutes of the meeting?

Q. Sir? It would be the third large tab, says Exhibits Defendants, past that, about this far down in the notebook.

A. Five?

Q. Five.

A. Yeah. I have five. There are minutes of the meeting.

THE COURT: No, sir. Defendant's 5. Just show -- why don't you turn it, show him.

A. Appendix five.

BY MR. LINTON:

Q. Is that the second resolution?

A. Yes.

Q. And that resolution is after your second meeting with the School District, but before the lease was adopted?

A. Yes.

Q. And you mentioned that there were three readings of the ordinance adopting the lease, and that the petition was received on October 10th. Wasn't the third reading of the ordinance on September 20, 2011?

A. I think so.

Q. Wasn't it before the petition was received?

A. This?

Q. The third reading of the ordinance adopting the lease?

A. Yes. I might point out that this resolution only calls for 500 students. It has no mention of the square footage.

Q. Mayor Smith, isn't your house right next to the school?

A. Right near. It is in proximity. There's

about 70 to a hundred feet of woods between us.

Q. Is there a buffer between your school -- the school and your house?

A. Yes.

Q. How was it determined that that buffer would be put there?

A. Council did. Initially we had 120 feet, I believe, as a buffer. And the School District asked for more property. And without hesitation, it was reduced to 70 feet.

Q. Didn't you help negotiate to get that buffer made larger between your house and the school?

A. I did. But Council Kaynard came up with the number. I think 105, I think it was. I was looking for a hundred. He made it 105.

MR. LINTON: Okay. Thank you. Nothing further.

THE COURT: Redirect?

MR. YOUNG: Nothing further, Your Honor.

THE COURT: Thank you. You may -- you may step down. Call your next witness, please.

MR. YOUNG: Thank you. Ms. Rode is going to handle Karen Coste.

THE COURT: All right. Thank you, Ms. Rode.

KAREN COSTE, after having been first duly sworn, testified as follows:

THE CLERK: Give us your full name please and spell your last for the reporter.

A. My name is Karen Coste, C-o-s-t-e.

DIRECT EXAMINATION BY MS. RODE:

Q. Thank you, Ms. Coste. Could you tell the Court what your address is, please?

A. I live at 322 Station 19, Sullivan's Island.

Q. And how long have you lived on Sullivan's Island?

A. I've lived there since 1986. I married a fifth generation islander, so I kind of claim a heritage that -- that really is his.

Q. That's almost 30 years that you have --

A. Yes.

Q. -- lived on Sullivan's, is that correct?

A. Thirty years.

Q. And are you registered to vote on Sullivan's Island?

A. I am.

Q. Ms. Coste, do you currently work?

A. I'm retired.

Q. And what did you do before you retired?

A. I worked for the Charleston County School District. I was a teacher for 15 years. And then I was a school administrator for 15 years.

Q. And so you dedicated your career to educating students?

A. Absolutely.

Q. Now, Ms. Coste, you know that we are here today to talk about Sullivan's Island Elementary School, correct?

A. Yes.

Q. When did you first hear about a new school being built on Sullivan's Island?

A. It seems as though there was always -- there was some chatter, just neighborhood island talk about the need for a new school or a remodel or -- so I would say probably in 2011 thereabouts it became.

Q. And -- and describe briefly what the chatter was?

A. That -- at first it was going to be that the school was going to be, you know, refurbished. And then we heard that it was going to be destroyed and a new school would be built.

Q. Okay. What was your reaction to this news of a new school being built?

A. I thought it was wonderful. I was thrilled that a new school was -- was going to be built on Sullivan's Island.

Q. And did you share -- share this news with your

neighbors?

A. Yes.

Q. And did -- did you meet with any neighbors about the new school process?

A. Not really meet with the new neighbors. We -- it was just a -- it's such a small comfortable island. And we all have golf carts. So we all just kind of just stop and visit and chit chat. And that's kind of how things -- in my way my -- life is conducted on Sullivan's Island.

Q. At some point, did your initial excitement about the school develop into an amount of concern?

A. Well, it did. My -- our daughter lived right across from the -- Kathy and Will Post.

Q. So, she's a resident of Sullivan's Island too?

A. Not currently. She's -- but at the time, she and her husband lived in a cottage across the street. And on her -- on her front banister to her stairs was a note, a handwritten note. And it said something like neighborhood meeting or meeting about the school, 6:00 at the Post's house. And that piqued my curiosity, so my daughter and I did go to that 6:00 meeting.

Q. And what -- what was the meeting about?

A. The meeting was about the size of that school and how huge it was going to be. And that it was going

to be large and that was a concern for the neighborhood -- immediately the neighborhood because of the -- our view, our passion for charm and tradition and just the quaintness of Sullivan's Island.

Q. And when you left that meeting, was there a resolve to meet again?

A. Yes.

Q. Can you continue --

A. Yes. There was enough concern to just check it out, to see what's going on. We really didn't know that much. And so, yeah, we were going to meet again. And there were some people that I -- that other people were going to contact people and I was going to contact some people. And that's just kind of how it developed.

Q. And what was the goal of -- of contacting other people and bringing more neighbors into these meetings?

A. Well, there were lots of reasons for it. We wanted to know if they shared our concerns. We wanted to find out more information. And we wanted to just brainstorm a way to communicate if there were going to be obstacles or just concerns that islanders felt. We felt that, you know, we should have that shared opportunity to communicate that with each other.

Q. And as these meetings continued, did your

group grow in size?

A. It did.

Q. And at some point, did your group decide to petition the Town?

A. Yes. There was -- at the time, and I'm not good with the dates and -- but there was -- there was a movement afoot with the parents of Sullivan's Island schools, of the new school, and they were -- were circulating a letter. And it was a -- an address stamped, all you had to do was put your signature on it, a letter to Dr. McGinley saying that the signer endorsed the new school. And on that was a picture of a precious school. It was just, you know, it was just very eye appealing.

Q. Let me stop you right there. I want to make sure that I -- I'm following what you are saying. So you received a letter?

A. I didn't receive it. My husband and I were in a supper club. And a mother of the students in the school was in the supper club. So when we met that night for supper, she had for each person there an envelope addressed, stamped for Dr. McGinley.

Q. And it was a -- a letter -- what did the letter ask the people to do?

A. To support the new school. And it had a

picture on it and I eagerly signed it. I was very proud of supporting that school.

Q. With the picture that you received?

A. With the picture that I saw and the information and the discussion that we had at supper. And it was -- it seemed quite positive, great.

Q. Okay. And, again, did you -- did that support for the school grow into concern?

A. It did.

Q. And maybe describe for the Court how the first petition came about?

A. Okay. The first petition -- we found out, as our group got information and there was -- we found out that it was going to be 72,000 square feet.

Q. So you thought it was not going to look like the Mount Pleasant schools?

A. No. It certainly couldn't based on that size and that scope. And it had nothing to do with the size of -- I mean the population of students, it had to do with the physical building.

Q. Yes, ma'am.

A. And the size of that. And so as we communicated more and more around the island, everyone -- or, you know, the chat was that they too were concerned and what it would do to the island in so

many ways.

A. So we decided let's just circulate a neighborhood -- we called it a neighborhood petition. And it was written, just asking Town Council to -- to stop, to slow down. To listen to this -- the voices in this petition, the signees of this petition. And let's see what we can do about the size of this school. We were concerned at the time about the size itself and how that might look.

We were concerned about our infrastructure, which right now is in some cases is very fragile. We were concerned about the amount of buses coming on and off the island and how that was going to be appropriately managed. We were concerned about safety. And so we just wanted to have a seat at the table really to have that opportunity to talk that out.

Q. And in that first petition, did you ask the Town Council to submit any school design projects to the Design Review Board?

A. We did. We did.

Q. And why did you include a reference to the Design Review Board in your initial petition?

A. Well, as I recall, the Design Review Board's purpose is to take -- one of its purposes is to take Town Council out of it. When our Town Council first

developed the Design Review Board and other boards and commissions, it was intentional that Council not elect members of Council, not have that kind of -- for lack of a better word -- power so that it would be impartial, so that it would be -- reflect those people on boards and commissions who might well represent the citizens.

Q. And as a resident of Sullivan's Island, was it your understanding that the workings and the process of the Design Review Board was public?

A. Oh yes, yes.

Q. Before we move on to the next step with this first petition, the letter that you referenced, that you were given at the supper club, who provided you with that letter?

A. The name of the person?

Q. Yes, ma'am.

A. Her name was Louise Colheim.

Q. And who is Ms. Colheim?

A. She is a neighbor, a good neighbor. And she is -- at the time, she had two daughters at Sullivan's Island Elementary School.

Q. She was a parent?

A. She was a parent, yes, ma'am.

Q. And you indicated, I think, that in addition

to the letter, there was a picture with it?

A. Yes.

Q. In this packet.

A. Yes.

Q. Can you describe for the Court what that picture looked like?

A. It -- well, I wish I -- if you -- Sullivan's Island School is on Ion Street. And it -- and there's a street that just comes off of it. On each side of that area are two batteries, historic batteries.

Q. Yes, ma'am.

A. And if you are standing at -- looking at where the school is -- where the old school was, the rendering of this picture was of this precious, charming fit-in school. And it went from the battery to the battery. And it had a very welcoming front. It looked similar to other schools in Charleston County. And it looked similar to mount -- the new Mount Pleasant Academy, the front of it, the facade.

Q. And, Ms. Coste, does the picture that you just described, look anything like the new school that is almost built?

A. Not even close. It just does not.

Q. Is the new school larger?

A. Huge.

Q. Does it have the -- I guess you described it as the quaint and charming look of the picture that you saw?

A. It does not.

Q. Okay. So after that, you started walking us through your idea to draft this first petition to voice your concerns to the Town Council, were you involved in the drafting of that petition yourself?

A. I was.

Q. And did you collect signatures of your other neighbors?

A. I did.

Q. To include on this petition?

A. Uh-huh.

Q. Did you sign it yourself?

A. I did.

Q. And eventually, after you collected signatures, did you present this first petition to the Town Council?

A. We did.

Q. Okay. And tell the Court how and when you presented this first petition to Town Council?

A. I believe -- I believe that it was in -- it was either August or September. It was right in the -- at the end of the summer.

Q. Okay.

A. And we presented the -- what I call the neighborhood petition.

Q. Where were you?

A. At -- I'm sorry. We were at Town Council.

Q. At a meeting?

A. Yes. And as Mayor Smith said, the first 20 minutes are open to public discussion. And there was, you know -- so our group spoke. And several people made reference to the fact that we are presenting this petition in the hopes that we can slow this down and take a look at this school and maybe let the residents have a voice.

Q. And did you physically hand a copy of the petition up to the Town Council at that meeting?

A. I did not physically. But a member of our group gave it to -- had copies for each Council member.

Q. And what was the Council's response to the petition that night? What did they do with the copies that were handed to them?

A. They took the copies -- if this was the Council table, and they just put it right there and continued with Council meeting.

Q. Did -- did Town Council ever respond to your initial petition after that night?

A. No, they did not.

Q. Did Town Council do anything as a result of the petition that you handed out that night?

A. Not to my knowledge.

Q. So let's fast forward a little bit. After Town Council did not respond to your first petition, what did your group do next?

A. Well, we -- and again, the order of things I'm not -- we knew that -- well, to be honest with you, the fact that they ignored our request to be heard, we decided to do a formal petition.

Q. Okay.

A. A certified petition. It was about that time --

Q. What was the purpose of the second petition, the formal petition as you've described it?

A. Well, it was to show -- it was to do -- to do it correctly, to do it -- to have the physical petition be done appropriately. And, secondly, it was only registered voters and it was -- it very definitely spelled out the fact that we were very concerned, we wanted a smaller school, not in terms of enrollment, but in terms of size. And we were very concerned about what this school would do to the island.

Q. And in this second petition, did you again

request that the design and construction of the new school be subject to the Design Review Board?

A. We did.

Q. Who drafted the second petition?

A. An attorney, Billy Want.

Q. And who is Billy Want?

A. He is an attorney. And I -- he lives on Sullivan's Island. And he was -- he is friends with some members in our group. So we -- the friends -- some people in the group said he has a zoning specialty, his expertise is in -- related to the field of our concern.

Q. Okay. So, Ms. Coste, you sought who you thought would be an expert to help you put together this formal petition?

A. Yes.

Q. Is that correct?

A. Yes.

Q. From another Sullivan's Island resident?

A. Yes, ma'am.

Q. Okay. Did you circulate the second petition?

A. Yes. We didn't have much time. We had to -- we had about a week if I'm not mistaken.

Q. And why did you -- why did you only have a week, Ms. Coste?

A. Because they had moved up the time -- the calender on September, they were going to have the second reading and the ratification on the same night, so we had -- we lost a good amount of time in trying to get signatures.

Q. So was your goal to present the formal petition to Town Council before the lease was ratified?

A. Absolutely, yes.

Q. So you began collecting signatures?

A. Yes.

Q. And did you go door-to-door yourself?

A. I did.

Q. And when you went door-to-door and spoke with your neighbors, did you present them with a copy of the petition to read before they signed it?

A. Yes. Yes.

Q. And did you answer any questions to the best of your knowledge that your neighbors might have had about the petition?

A. Yes.

Q. And did everybody who signed your petition sign it willingly?

A. Absolutely.

Q. Ms. Coste, did you have this formal petition certified?

A. Our group did, yeah.

Q. Okay. And after this formal petition was certified, did you submit that petition to the Town Council?

A. Yes.

Q. And do you know when you did that?

A. It was before -- it was that Council meeting in September, before it was -- the lease was signed, I think.

Q. So your understanding, it was before the Council approved and signed a lease for the --

A. I know it was before, yes.

Q. And did the Town respond to your second petition, your certified petition?

A. No, ma'am.

Q. Did -- did Town Council adopt your initiated ordinance that accompanied the petition as law?

A. No, ma'am.

Q. Did Town Council present this initiated ordinance to the public to vote on it?

A. No.

Q. Did Town Council --

THE COURT: Listen, time out. Let's have a conference folks. We can take a break.

(WHEREUPON, a brief recess was taken.)

THE COURT: Thank you. I appreciate it. Please keep your seats. Thank you very much. Thank y'all. I appreciate the conference. And I think it was helpful. Certainly it was helpful for me and I thank you all for that. And for those of you here, we tried to see how we could streamline this a little bit, not cut things out, but to get to the chase and really what the issue is. And I think we're to call a witness that is going to kind of frame that, I think, Mr. Young -- I believe, is that correct?

MR. YOUNG: That's correct, Your Honor. We'll excuse Ms. Coste.

THE COURT: Yeah, and please don't mis -- don't read anything into that. I appreciate the -- your input. There's a legal issue here obviously. And we need to have that framed for purposes -- as I stated when we started this. And I'm glad to be a part of the process. It's a great process we have in this country really. And frankly, I'll share this war story a little bit, because it really does frame it beautifully I think.

Three months, perhaps -- I had been having this job for three months, years ago -- my father was still alive. And we used to go and take my father and mother out for Sunday dinner after church. And we went up and

they -- we were having a conversation. And he said, son, how do you like the job? I said well, it's new. I have been on for about three months. I said, you know, it's -- I'm enjoying it. It's interesting.

He said, you haven't let those lawyers back you in a corner, have you? I said, sir? Have they backed you in a corner? I said, I'm not sure I understand what you mean, back me in a corner? He said, you know, make a mistake.

I said, have I made mistakes in three months? I said I am very confident I probably have. But the beauty of our system is, if I make a mistake, they can take that to Columbia and review it and they'll correct that. And that's the process.

I shared that story with a wonderful jurist, who is still serving this state, Judge Cottingham. And many of the lawyers know Judge Cottingham. And I had the pleasure of working with him as a judge and practicing law before him as a lawyer, so super human being.

And he just shook his head, he said, yep, I understand. But just because they said you made a mistake, doesn't mean you made a mistake. And I said -- I said, you know what, you're right, but that's the beauty of the process. And we're -- we're -- we

see that every day.

I share this frequently in criminal court. We take a lot of things sort of for granted, I think, maybe that's human nature. I don't know. But we have some pretty important rights in this country. And we just sort of say, oh, yes, that's right. But when you look at other countries and realize what they have to deal with, we are a country of laws and thank God for them. And that's what protects everybody in this room.

And that's what we are trying to do and trying to frame the legal issue. There are lots of issues here. And we can talk all day long about the multitude and multifaceted issues, some political, some just human issues, human factors. And they are all important. But the critical thing for this lawsuit is what is it that will help both sides, what is it that needs to be decided.

And I think it deals with -- I guess really who can say -- who can say it's invalid. And how -- what is necessary to determine that. And I think that really is where we are. And so I think we are going to call a witness now that -- thank you all for indulging us for that.

And again, Ms. Coste, thank you for your patience as well. I appreciate that so much. And I

appreciate what you have shared thus for, too. Thank you, ma'am.

MR. YOUNG: Your Honor, one item of course, is Ms. Coste is subject to cross-examination in --

THE COURT: You wish to -- you can reserve that if you want. Do you need to examine her at this point on anything?

MR. LINTON: We'll reserve it.

THE COURT: That's fine. Okay. Thank you. Mr. Young, I appreciate you calling that to my attention.

MR. YOUNG: Yes, sir. Your Honor, the Plaintiff calls councilman Jerry Kaynard.

THE COURT: Okay. No pressure, Mr. Kaynard, but you're the witness that's going to frame the --

MR. YOUNG: The critical witness.

THE COURT: Well -- I think that's been set up. And I appreciate the mayor's testimony in that regard. And I had the pleasure of representing municipalities and understand that role of Council to mayors and counsel as well. So I appreciate that.

GERALD A. KAYNARD, after having been duly sworn, testified as follows

THE CLERK: Give us your full name and spell your last for the record.

THE WITNESS: Jerry Kaynard -- Gerald A.

Kaynard. And K-a-y-n-a-r-d.

DIRECT EXAMINATION BY MR. YOUNG:

Q. Thank you. Mr. Kaynard, by background, please tell us a little bit about what you do and your involvement in public service on the Sullivan's Island Town Council?

A. My background on the Council?

Q. No, sir. What you do, what your profession is?

A. I'm a lawyer. I have practiced for about 40 years.

Q. And when were you admitted?

A. 1972.

Q. You are a resident of Sullivan's Island?

A. I am. I've lived on Sullivan's Island 37 years.

Q. Yes, sir. And when were you first elected to Town Council?

A. 2007.

Q. All right. And you were in court for the testimony from Mayor Carl Smith, correct?

A. I was.

Q. Is it generally an accurate description of how this process worked, involving the lease negotiations?

A. I don't think I can answer that general of a

question.

Q. Were you the primary person that negotiated the lease with Mr. Bill Lewis, as described by Mayor Smith?

A. Well, I'm one of seven Council members that -- the -- I was given some responsibility involving the lease, but it was a Council decision.

Q. And I want to direct your attention immediately to the referendum. You heard some testimony from Ms. Coste, correct?

A. Yes.

Q. And do you remember the referendum being presented to Town Council as reflected at Exhibit No. 2 on October 10, 2011? I think you have the notebook in front of you there if it's helpful.

A. I believe that the first time Council saw the petition was at our regular meeting. And I think that might have been October 18th.

Q. Yes, sir.

A. 2011.

Q. All right. And when the petition was presented, did you make a determination about the validity of the petition?

A. Did I personally?

Q. Yes, sir.

A. Well, I am a lawyer, so I did first thing, look at the statute, and do some research on the cases and the law involving a petition referendum.

Q. Okay.

A. So I did come to some conclusions myself.

Q. And what did you decide about the petition and the referendum?

A. Well, I concluded that the petition was defective.

Q. And why did you conclude that it was defective?

A. Well, there -- there were a number of reasons. The petition was asking what -- the subject matter of the petition dealt with design issues and zoning issues, which were administrative issues that Town Council are -- that are administrative issues before a government.

The petition seemed to be asking us to break a lease that we had entered into with the Charleston County School District. And I believe we had had three readings. At that time, our ordinance required -- we adopted an ordinance with three separate readings. And I think we had already had three separate readings approving the lease before we received the petition, so I thought the petition had -- was late. The issue had

already been decided.

And the petition seemed to be asking us to send the matter to the Design Review Board, but the Design Review Board did not have any guidelines to deal with a -- a school review.

The property where the school site was, was not zoned and so there was no specific category in the zoning ordinance dealing with a school construction.

Q. Let me try to get those individually. You decided it was defective because it dealt with a zoning matter, is that correct?

A. And an administrative matter that had design issues and zoning issues, yes.

Q. All right. And then you also decided that it was defective because it was presented too late, is that correct?

A. We had already entered into a lease, so we had an issue as to our obligations under the lease, yes. It seemed to be asking us to break the lease.

Q. Okay. And so because the petition was submitted at the time that it was, you decided one of the defects was it's too late?

A. Well, I concluded that it was -- we can only -- as Council members, we can legislate. That's what our job is. And so my understanding of a petition

and referendum, if it's -- it has to be within the power of something that we can perform in our legislative function in order for it to be a proper subject matter for a referendum.

Q. Yes, sir. My question is limited to whether or not you decided it was defective because it was submitted to Town Council too late? Was that a basis for your decision or not?

A. Well, I think as a matter of fact --

THE COURT: Wait a minute. For purposes of my purpose, let's clarify that. What his purpose is, he's one Council member?

MR. YOUNG: Yes, sir.

THE COURT: I mean, you're asking him, Council as a whole -- because I don't think he can speak for Council as a whole. So you're asking him his motivation?

MR. YOUNG: His individual analysis.

THE COURT: I want to be sure that we're talking about his and his only.

MR. YOUNG: Yes, sir. Thank you.

THE COURT: Thank you. I'm sorry.

BY MR. YOUNG:

Q. You, Mr. Kaynard, as member of Council, individually, one of the reasons that you decided that

the petition was defective is because it was too late, is that right?

A. Not exactly. Personally, I would have considered it at any time we would receive a petition from residents. Anything that is a concern to residents that we get as a Council, regardless of what time it comes in, is something that we respond to and that we look at very carefully. But it was one of the issues that, you know, that I looked at in terms of timeline. But -- does that answer your question?

Q. No, sir. I want to make sure certain that the time that the petition was submitted was not a factor in your determination that it was defective?

A. No, it was not a major factor. The major factor was I didn't think we could perform what the petition was asking us to do as a legislative body.

Q. All right. And then those were your individual determinations, did you share those with other members of Council?

A. Yes.

Q. And what was the result of your sharing your analysis and determination with the other members of Council? Was there discussion about it?

A. There was.

Q. And tell us please how that discussion

proceeded and what took place?

A. Well, I think the first thing Council did after that was to seek the attorney -- the opinion of our town attorney, Larry Dodds and a second opinion from outside counsel. So you might conclude that they did not rely on my opinion, that they wanted other advice.

Q. Yes, sir. And my question is not whether they relied on your opinion, but whether there was any discussion on Town Council in light of the opinions you shared with them?

A. Well, there was discussion about how to proceed with the petition, how to respond to it.

Q. And as a result of that discussion, what did Town Council decide to do?

A. Well, first we got legal advice. And the next thing we did, I think in sequence, was to seek a declaratory judgment. We filed a lawsuit in Circuit Court.

Q. Okay. As a result of that legal advice, was the legal advice about what to do with the referendum?

A. Of course.

Q. All right. And you got that from the Town's regular attorney, Mr. Larry Dodds?

A. Yes. I believe that he -- he gave his

opinion, I think, in one of the Council meetings in open session.

Q. Okay. And that would be reflected in some of the minutes that are attached as exhibits to this proceeding, correct?

A. Yes.

Q. And then you also sought outside advice from Mr. Trenholm Walker, correct, legal advice about what to do with the referendum?

A. Yes.

Q. And that's -- Town Council was the client or was looking for that advice, correct?

A. That's correct.

Q. All right. And then what did Town Council decide to do after receiving that legal advice?

A. In sequence, I believe, that's when we filed the action for the declaratory judgment.

Q. All right. And let me draw your attention to -- I believe it's tab number -- do you have that notebook in front of you, Mr. Kaynard?

A. Yes.

Q. At Joint Exhibit No. 8, in February of 2012, the Town of Sullivan's Island filed a lawsuit in Circuit Court to determine the validity of the referendum, is that correct? I'm sorry. Take your

time. Tab 8.

A. That's correct, February 2012.

Q. All right. And the purpose of that lawsuit was to determine whether or not the referendum was valid, correct?

A. Well, I think it was to construe the petition that we received.

Q. Certainly.

A. And to declare the rights of the parties. So broadly, I guess, that would be included.

Q. The lawsuit sought a declaration from a judge that the petition that had been presented was defective either for the reasons you mentioned or any other reason, is that correct?

A. Yes.

Q. And then that lawsuit was never -- the Defendant that the Town chose to sue in that lawsuit is a group called Islanders for a Smaller School, which is an unincorporated association, correct?

A. I really don't know of my personal knowledge whether they are incorporated or not.

Q. All right. The Town deliberately chose not to name any of the individuals that signed the petition as a Defendant in that lawsuit, correct?

A. Yes.

Q. All right. And the Town never served that lawsuit or officially commenced that lawsuit under the South Carolina Rules of Civil Procedure, is that correct?

A. Well, we did file it.

Q. Yes, sir. And you are --

A. To my knowledge, I don't know whether -- I don't think it was served.

Q. Okay. And then subsequently, without ever serving the lawsuit, several individual people who had signed the petition volunteered to accept service of the lawsuit personally, is that correct?

A. Yes.

Q. And those are exhibits as well. It was Kathy Post and Will Post, who are Plaintiffs in this action, as well as -- I believe it was Mr. Vince Graham, Fred Wszolek that was testified to earlier, is that your recollection?

A. Yes. I think the answer may be a little bit different for each one. But as I recollect, I think some of the responses we got had limitations on their participation, that they would not be represented by counsel and they would not represent the group.

Q. Nonetheless, they all volunteered to accept service, correct?

A. As I recall, yes.

Q. All right. And as reflected at tab---

A. I believe -- excuse me -- I believe one of the people you mentioned, I'm not sure on that list, was not a signer of the petition.

Q. I think that's right. Mr. Graham never signed the petition, correct?

A. Yes.

Q. All right. If you will bear with me and turn to the minutes at tab number 6, under the Plaintiff's Exhibits. I think it's the minutes for January 17, 2012.

THE COURT: For the Plaintiff?

MR. YOUNG: Excuse me, Your Honor. It could -- my apologies. It's the Joint Exhibit Tab 6.

THE COURT: That's fine. Thank you.

MR. YOUNG: Thank you.

A. Yes.

BY MR. YOUNG:

Q. And I'm looking at the fourth page of the minutes, behind tab 6. You were actually the person that made the motion to go forward with the declaratory judgment that you just testified about, correct?

A. Yes.

Q. All right. And then let me direct your

attention to tab number 7, which is the minutes from March 5th, 2012. Do you see that, the next tab?

A. Yes.

Q. And in that tab on the second page, is there a summary of Mr. Dodds' legal advice that you just talked about, and does it specifically read "It was Mr. Dodds' recommendation to council, regardless of his personal view, that it was a waste of the Town's funds to proceed with the referendum. Attorney Trenholm Walker has also given Council the same recommendation". That happened at the March meeting in 2012?

A. That is reflected in the minutes.

Q. Is that your recollection of what actually happened?

A. Yes.

Q. All right. And then a little further down on that same page, does it read that the Town does not have a legal obligation to go forward with the lawsuit, it is the Town Council's decision to make -- whether to proceed with the lawsuit?

A. You are still on page four?

Q. Yes, sir.

A. Where?

Q. Excuse me. Right above the little short paragraph that says Mayor Pro Tem -- see the last

sentence of the paragraph right above there?

A. No. I'm not sure where you are.

Q. Page two. Excuse me.

A. Two.

Q. Are you with me, Mr. Kaynard, Councilman Kaynard?

THE COURT: Page two of what?

MR. YOUNG: I'm sorry. Page two of tab number 7, which is the March 5, 2012 --

THE COURT: Okay. I have that. Thank you.

A. You are asking me about the opinion that Mr. Dodds expressed?

BY MR. YOUNG:

Q. Yes, sir. And I had moved on a little further down, didn't the Town Council decide that the Town does not have a legal obligation to go forward with the February lawsuit that you just testified about?

A. It seems to me, you know, these minutes are not in quotes. It seems to me where you are reading -- I'm not really sure whether there's a summary of Mr. Dodds' opinion. I don't think that's an action by Council that you are reading from.

Q. Okay.

A. Usually -- usually we make decisions by motions and in -- in a more formal way.

Q. Yes, sir. Two paragraphs up, is there a summary of Mr. Dodds' recommendation to Council, that reads "Mr. Dodds' recommendation to Council, regardless of his personal view, was that it was a waste of the Town's funds to proceed with a referendum. Attorney Trenholm Walker has also given Council the same recommendation"?

A. That's what the minutes reflect.

Q. And is that what happened at the meeting in March of 2012, was that the advice that you all got from the Town lawyer and outside counsel?

A. Well, I believe this is Mr. Dodds speaking here. So, yes, that would be a summary of what -- what was said.

Q. Okay. And similarly, at that same meeting, did the Town decide that it didn't have the obligation to go forward with the February lawsuit that we just talked about?

A. I don't think we decided we didn't have an obligation. I think we -- we were searching for a method to get the issues joined before the Court and the filing of the declaratory judgment was an effort to do that. We had not been successful in getting the group to come into court.

Q. After March of 2012, did the Town of

Sullivan's Island voluntarily dismiss the lawsuit that we just referenced?

A. Some months later, I think it was dismissed.

Q. Okay. And then as part of your analysis of whether or not the case had to be presented to a judge, did you review the applicable statute and case law in South Carolina or any particular case law?

A. I did.

Q. Did you look specifically at a case called the Town of Hilton Head vs. The Coalition of Expressway Opponents, decided by the South Carolina Supreme Court in 1992?

A. I did.

Q. And based on your view of the statute and the case that I just referenced, did you determine that the Town Council had the authority to declare the subject petition invalid?

A. No, that's not what I decided.

Q. Okay. Who had the authority to determine the validity of the subject petition, please?

A. Well, I think the courts always have the authority to review any decision that's made by a legislative body like Town Council.

Q. All right. Let me be very --

A. We --

Q. I'm sorry. I didn't mean to cut you off.

A. I understand. I think we, as Town Council, have a legislative role to play. Obviously the state legislature sent the petition to us, decided that we would receive it. We had some role to play in receiving it and processing it, and deciding what to do with it. That's a legislative function.

The courts have their role in terms of reviewing it and decided if we acted in a proper way. So I think there are two different functions, but both of them, I think, are set out under the statute.

Q. And the reason that you filed the case, the Town filed the case in February of 2012, was to have a judge decide the validity of the ordinance, correct?

A. Of course, yes.

Q. And the very last paragraph of the Hilton Head case, you reviewed it personally, is that correct?

A. Yes.

Q. And I want to give you a copy. And if the Court will allow me to read over your shoulder, does the very last paragraph of the Hilton Head case say --

THE COURT: Wait a minute. I don't need him to read that. I'm -- first of all, he's a Council member.

MR. YOUNG: Yes, sir.

THE COURT: And we -- we -- it seems -- I think

that case comes out with -- when -- what's the professor's name that testified and the court reversed the decision --

MR. YOUNG: Freeman.

THE COURT: Freeman. Thank you. John Freeman's decision. The court said, no, we don't need his opinion on that. That's my problem. I have the case up right now. I'll be happy -- you and I can talk about it, but I don't need his statement.

MR. YOUNG: Thank you. Bear with me, Your Honor, I believe I am --

THE COURT: Sure.

MR. YOUNG: Mr. Kaynard, thank you very much. I don't believe I have any further questions.

THE COURT: Thank you, Mr. Young. You may cross examine.

CROSS EXAMINATION BY MR. WALKER:

Q. Mr. Kaynard, Mr. Young was asking you some questions about the group that was named as a Defendant's Islanders for a Smaller School. During the time this controversy was whirling around the island, was there a group that called themselves Islanders for a Smaller School?

A. Yes. And they issued press releases and issued letters and were headline news.

Q. Did you understand that Islanders for a Smaller School had actually orchestrated and presented the petition to counsel -- excuse me -- the petition that the Town received on October 10th?

A. Yes.

Q. Did you believe them to represent the interest of the petitioners, that group?

A. Yes.

Q. Mr. Young asked you about five particular individuals who agreed to come forward to be served personally, although they would be pro bono and not represent the group, would that have required an amendment of the pleadings to name them individually?

A. Yes.

Q. Did you believe at that time that amending the pleadings to proceed only against these five unrepresented individuals would have obtained what you understood the goal of the litigation to be?

MR. YOUNG: Objection, leading and speculative.

THE COURT: He's on cross-examination, I'll allow it. And you can redirect him. Overruled.

A. Can you ask it again, please?

BY MR. WALKER:

Q. Did you understand that if the pleadings had been amended to drop Islanders for a Smaller School,

but to name five people individually and not as representatives of the group that submitted the petition, would you have -- and they have already said they aren't going to be represented and they aren't representing the group, would you have understood that to accomplish what you felt to be the goal of the litigation?

A. No.

Q. Why not?

A. Well, there were a number of opinions expressed by residents about this issue. And it was very hard to determine. We had no way to determine whether an individual opinion represented the group or the petition, or the issues in the petition. So selecting an individual did not seem to me to join the issues that we were asked to address in the petition. I didn't know whether we would be picking somebody at random that had a different opinion from what was presented in the petition.

Q. Did counsel let it be known that they wanted somebody to come forward from the group who was willing to accept service on behalf of the group so the case could proceed?

A. Yes. We made that very clear. I mean, I think that I, personally, and Council were absolutely

stunned that the group did not join into the lawsuit and present the issues to the Court. We fully expected that's what was being requested of us and that they would participate.

Q. And they didn't do that, did they?

A. They did not. They -- when we filed the lawsuit, they disappeared.

MR. WALKER: Thank you, Your Honor.

THE COURT: Now redirect.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION BY MR. YOUNG:

Q. Mr. Kaynard, you are a practicing lawyer. Don't you agree that no Defendant ever has to voluntarily accept service?

A. Voluntarily? No, they don't have to voluntarily accept it.

Q. All right. We have Rules of Civil Procedure that provide the manner of service for groups, correct?

A. Yes.

Q. And we have Rules of Civil Procedure that allow the amendments of pleadings freely under Rule 15, correct?

A. Well, you can serve -- yes, under that.

Q. You can amend pleadings also relatively easily

in your experience, is that true?

A. Yes, you can amend pleadings sometimes with permission of the court.

Q. And the problems that you described about whether people's opinions on the petition would vary, that's inherent in any petition, isn't that true? You always have that problem?

A. I -- I don't know that I can answer that. I mean, I know we had very specific issues we were asked to address in this petition and that's what we were concerned about. We wanted to respond to those issues. We understood there were other opinions, as there always are in any community, but we were trying to respond to the issues in that petition. And we thought the best way was to get the group that presented it, to appear with us in court.

Q. Regardless of the Defendants, the legal issue about whether or not the Town can declare a petition invalid, it doesn't matter who your Defendant is, is that true?

A. Well, I think you have to join the issues. You have to --

Q. You have --

A. You have to raise the appropriate issues and you have to have an adversarial situation.

MR. YOUNG: No further questions, Your Honor.

THE COURT: Recross?

MR. WALKER: None. And we reserve the right, depending on what the court does, to call him in our case if we get that far.

THE COURT: Okay. That's fine. Thank you. Do you have any other witnesses to present at this point -- what I'm going to do, let's take a recess for -- let you ponder that. Let's recess until, oh, let's say 2:00.

MR. YOUNG: And I'll forecast, I doubt it, Your Honor. If we do, it will be one short one.

THE COURT: That's fine. And do you anticipate calling witnesses for consideration on the issue?

MR. WALKER: Your Honor --

THE COURT: You can reflect on that at lunch as well.

MR. WALKER: We will. We are going to make a motion -- just to --

THE COURT: I understand.

MR. WALKER: -- let the court know, for an involuntary nonsuit when the Plaintiff rests.

THE COURT: All right. That's fine. Okay. We'll be at ease then until 2:00. Thank you.

MR. YOUNG: Thank you.

(WHEREUPON, a lunch break was taken.)

THE COURT: Okay. Are y'all ready to proceed?

MR. YOUNG: Yes, sir, Your Honor. We, over the lunch hour, have met with opposing counsel and made a couple of quick agreements that I think will expedite this.

THE COURT: Great. Thank you so much.

MR. YOUNG: First and foremost on the exhibits, I think this whole notebook we will mark as Joint Exhibit 1 in for all purposes.

THE COURT: Well, that takes care of one of my first questions. That's good. Okay.

(JOINT EXHIBIT NO. 1 RECEIVED INTO EVIDENCE.)

MR. YOUNG: And then, Your Honor, we had sort of the hanging issue about the potential testimony of Kathy Post and Will Post because of their unavailability. And what we have proposed, and I think the Defendants have agreed to, is that in sum and substance, if we were to call Ms. Post, of the Plaintiffs in this case, her testimony would be largely the same as Ms. Karen Coste. As a practical matter, the substance of her testimony would be that they prepared the referendum, had the -- all the things that Ms. Coste testified about. They had them signed, certified. And also they volunteered to accept service

of the February lawsuit. That the referendum was prepared with the assistance of Billy Want.

And so what we think might be a reasonable solution is to proffer that testimony if they'll stipulate to it. That will excuse the need to --

MR. WALKER: We will accept the proffer, that she would testify to that effect and have no problem with the court taking the proffer as presented by Mr. Young.

THE COURT: Thank you, Mr. Walker. And as we discussed in chambers, there is no challenge from the Defendants as to the preparation, submission of the petition, whether or not the signatures are original. You will stipulate that they are proper in that respect?

MR. WALKER: We do. The County Election Commission reviewed the petition and certified to the Town that it had the requisite 15 percent of qualified voters.

THE COURT: Okay. Thank you very much

MR. YOUNG: In light of that, Your Honor, the Plaintiffs rest their case.

THE COURT: All right.

MR. WALKER: Your Honor, at this time, the Defendants would move for involuntary nonsuit under

Rule 41(b). And the basis for the Defendant's motion is that the Defendant is entitled to judgment as a matter of law. Unlike in a jury trial, at this stage in a nonjury trial as Your Honor knows, you can actually weigh the evidence.

THE COURT: Correct.

MR. WALKER: And we don't think at this point that we need to burden the Court with more testimony from Mr. Kaynard or Bill Lewis from Charleston County School District or Joe Henderson, the zoning administrator. Because it really is a question of law. And we believed it to be a question of law from the beginning.

And I don't think that anything the Plaintiffs have put up in their case establishes a material factual dispute of any kind. And we believe that under the applicable law, that the Court should rule that the ordinance as initiated in the petition is legally invalid.

We go into those reasons in great detail in our pretrial brief and we incorporate the arguments of our pretrial brief in my presentation here for purposes of this motion.

The initiated ordinance seeks to address an administrative matter of the Town, the entry of a lease

is an administrative matter. It goes so far that as to even suggest that the Town should breach that lease. That's an administrative matter, whether the Town will abide by the lease or not.

The initiated ordinance talks about design review and asks that -- or mandates that the review go before the design -- well, actually it says it needs to go before the body that propounds the design regulations, the design standards. And that, in fact, is Council, which has actually occurred.

And in substance, when we are talking about design, under the Comprehensive Plan Planning Act 1994, the enabling act, that is specifically addressed as a zoning issue. The review of design is a zoning matter. So under the I'On case, it's a zoning matter.

Additionally, we're dealing with a state wide procedure here with respect to school facilities. You have in your exhibits the Statewide Facilities Guide propounded by the Department of Education, Joint Exhibit 9, and the Statewide Facilities Guide is specifically incorporated into the lease. The lease says that the school must be built according to the 2012 South Carolina School Facilities Guide and the School Facilities Guide at that time.

In addition, we have in South Carolina a statute

that mandates that all construction be pursuant to that Facilities Guide -- and if I might approach -- I'll provide you with a copy of that statute.

THE COURT: That's fine. Can I get a good lawyer? This chair just gave way, so I've got to find one. I think I'm injured.

MR. WALKER: All right. Everything intact up there?

THE COURT Everything is good.

MR. WALKER: Good. As you know from your study of the Hilton Head case, one of the reasons that the court found that that potential initiated ordinance was invalid because it took away the authority of the highway department. And it wasn't so much that the highway department didn't have authority -- couldn't charge a toll or not charge a toll; it was, was there a statewide scheme and did that statewide scheme leave that discretion to the highway department.

And here we have exactly the same rule. We've got a statewide scheme. We've got a Facilities Guide that's mandatory and we've got a statute that says that it must apply to the construction and improvement and renovation of all public schools.

The initiated ordinance purports to dictate the size of the school. One of the alternatives in the

initiated ordinance states that Council would have to decree that the school could be no larger than the existing school. The existing school was around 33,000 square feet.

The -- these standards that I've referred to provides what needs to be furnished in terms of the facilities. It talks about -- it addresses schools. The ultimate approval of the school has to be by the Department of Education. They come in and inspect to make sure the school meets all these guidelines. So for the alternative reason, what the initiated ordinance does is challenge or at least to assert the authority of the State Department of Education. That would be another reason why it would be facially invalid.

We also have the question of what they are asking be done is impossible. The ordinance itself says, we are all in favor of a school, but we only want such and such a size. And the testimony is, we think clear that CCSD, Charleston County School District says it's going to be 500 students and 500 students could not fit within the footprint of the existing school. And that was going to be determined both by the State Facilities Guide and the specifications that apply county wide by Charleston County School District.

So what we were asked to do was nonfeasible. It was impossible and that would be another reason why the initiated ordinance would be invalid.

We also argue that it's invalid because part of it asks the -- or demands that the Town breach a written lease agreement, which is an actual act. They have asked the Town to commit a civil wrong and breach the lease. And that's not something that is subject to initiative and referendum.

I don't think we've heard any proof from the Plaintiffs that the initiated ordinance was legally viable. What we've heard is the argument that because Council did not proceed to judgment in its initial declaratory judgment, that under the Hilton Head case, this Court has to rule -- without any discretion -- it has to rule in favor of the Plaintiffs, that the Town has to put toward the initiated referendum. They are saying that the court no longer has any discretion to determine the efficacy of the initiated ordinance.

And we read the Hilton Head case somewhat differently. It specifically says on the paragraph we are going to be focusing on, which is the last paragraph of the opinion --

THE COURT: Yes.

MR. WALKER: -- that the Plaintiffs have

emphasized and you have before you, several holdings. And holding number four is that the Town has no duty to submit the invalid initiated ordinance of the elector pursuant to section 5-17-30.

And then it goes on to state after listing the five holdings, the sentence the Plaintiff hangs their whole case on. "We emphasize that these are findings which can be made pursuant to judicial inquiry only, and that a municipality has no power to pass on validity of an initiated ordinance. A declaratory judgment action is the appropriate method by which a municipality may" -- it doesn't say shall -- "may seek preelection review of an initiated ordinance".

We agree that the findings of Council are not binding on Your Honor. We agree that there's no presumption of validity simply because Council passed on it. And it has to make some sort of initial determination on it to know what its going to do.

But what we understand this sentence to mean is that the Court makes the ultimate finding without deference to Council. That that is for the court to make based on the application of law probably, and principally because it's a question of law.

We also would point out that we did, in fact, initiate a declaratory judgment action against the

group that professed to have put forth the petition that was publicized as promoting the petition, The Islanders for a Smaller School and nobody would come forward. The only persons who came forward wanted to be sued individually and not as a representative of the group.

Now, I'm not saying that that -- that Council's reasons for not proceeding excuse anything. What I am asking the court -- telling the court is that it explains why we didn't proceed. And we do think the situation is different from not proceeding at all.

We also have taken a look at this West Palm Beach Association of Firefighters case that was cited right after that sentence, from Florida. And in that case, much like this action right now, the suit was brought by the opponents. It was not brought by the municipality.

And even though the Court of Appeals in Florida -- the District Court of Appeals in Florida held that the better practice is that the Town initiate declaratory judgment. They went on to hold that that didn't mean that the Court lost its ability to determine that the ordinance that was initiated was invalid and therefore the municipality did not have to conduct the referendum. So we do not read Hilton Head

as saying that -- that the court has to order the Town to conduct a referendum on an initiated ordinance that is on its face invalid.

Several times in that opinion, in Hilton Head, the Supreme Court says "the court should not compel the doing of a vain thing and the useless spending of money". And it says if it's invalid, why should it be submitted to the voters? There is no default provision that if -- if the Town has not taken a DJ to judgment, then automatically it must conduct a referendum. And that is not what we suggest the court should rule here, nor what Hilton Head would dictate in this case.

We are, in fact, before the court and we ask the court to make the determination. We ask the court to make those findings and we're doing exactly what the Hilton Head case says ultimately is to be done, and that is that the judicial inquiry determines the ultimate findings. And you have the inquiry before you.

We also have raised last, but not least, the mootness. And we have mootness at a couple of levels. We have mootness within the initiated ordinance. The initiated ordinance says that the design review must be the body that propounds the design standards and the design standards are propounded by Council within the

zoning ordinance. The DRB does not propound any standards. It administers those standards. So we have already accomplished that.

The initiated ordinance says that the Town shall not agree to a lease that allows construction before design review. The lease we entered required design review and the Town to approve the construction, which is exactly what the design -- excuse me -- before construction, which is exactly what happened. So that would be moot too and ineffective. Because what the ordinance says was actually what the lease says. Town Council approves the design and CCSD cannot commence construction until the design is approved.

We also have the greater mootness issue which is that the school is well over 75 percent complete. The students are expected for their first day in class in August and there is no practical effect to the referendum at this point of the ordinance. The school is there.

Had the Plaintiffs believed that they had a winner as a question of law, they could have moved for a summary judgment a year and a half ago, or whenever they wanted to. And they have not done anything to enjoin CCSD or bring CCSD into this fray. And CCSD has gone ahead with the construction. Because it's so far

along, under the case that we cite -- the United States Supreme Court cite, and analogous South Carolina authority, we would submit that it's moot as well.

So for those six or seven reasons, we would ask the court to rule, as a matter of law, that the initiated ordinance is invalid and the Town has no obligation to proceed with the referendum or to implement that ordinance. Thank you.

THE COURT: Thank you. Mr. Young.

MR. YOUNG: Ms. Rode is going to address this.

THE COURT: Absolutely.

MS. RODE: Yes, Your Honor. I think I'll start with the claim we brought.

THE COURT: Sure.

MS. RODE: We had asked you to declare that the procedure followed by the Town in this instance, in responding to the petition and proposed ordinance that my clients put before the Town, that that process was not lawful and did not comply with the law. That is the subject of our action. The subject of our action is not whether or not this initiated ordinance was valid. We are asking you to look at the process and make a determination of the Town's power.

And I'll speak to the legal procedure that my clients -- we've stipulated they followed the procedure

provided them by the legislature to initiate an ordinance. Any ordinance, Section 5-17-10 of the South Carolina Code states my clients or any citizens of a municipality may propose any ordinance unless it appropriates money or authorizes the levy of taxes. And I know there has been subsequent case law regarding zoning. The I'on case was referenced as well, that puts one further limitation on the ability to act by ordinance. So we've got that.

The citizens of Sullivan's Island put forth an ordinance. It was signed by qualified electors in an amount totaling at least 15 percent of electors of Sullivan's Island and they had it certified. So my clients fully complied, we all agree, with Section 5-17-10 of the South Carolina Code.

Now, moving on to the Town Council, and for that we move to Section 5-17-30. And that ordinance -- I mean, that statute provision says, "that if a Council shall fail to pass an ordinance proposed by an initiated petition" -- which they did not do here -- "or shall fail to pass and perform it substantially as set forth" -- well, they didn't pass anything related to my client's petition, "then the initiated petition shall be submitted to the electors not less than 30 days, nor more than one year from the date that the

Council takes a final vote thereon". "The Council may in it's discretion, if no regular election is held, within such period provide for a special election."

Okay. So the statute provided the Council with two options, pass it or put it to a vote. It's conceded that they did neither.

And then the Hilton Head case comes along and it's decided in 1992. In that case, the Town of Hilton Head Island was presented with a referendum initiated and certified by its citizens, and the Town didn't want to put it to a vote. Because I think as Mr. Walker discussed, they were afraid that even if the citizens voted on it and adopted the referendum, the law would be invalid. So the Town itself went to court and sought, through a declaratory judgment action, a ruling from the court about whether or not the ordinance was facially defective.

The Master in Equity reviewed it, and agreed. He said, yes, it makes no sense to have a town put forth a referendum that would not be a valid law. And so that -- and he declared at that point, that the ordinance proposed was invalid. And that as a result of his declaration, the Town did not need to submit the initiated ordinance to a referendum vote. That was affirmed by the Supreme Court. And in explaining its

rationale, as Mr. Walker referred to, we have zeroed in on one paragraph, which we think when you combine this paragraph which I'm about address, with the statutory provisions that I previously discussed, indicates that there are three options.

And the third one, and the one that we -- we claim should have been done here, because obviously the Town did not think that this ordinance initiated by the client -- by our client, by the citizens of Sullivan's Island who signed the petition was valid, then they needed to take it to court and have you or another judge look at it and determine, pre-election, that it wasn't -- that it was defective and did not need to be submitted to a vote. And they did not do that here.

So we think, Your Honor, that the law is very clear, that when presented with a certified petition, a municipality in the state of South Carolina has three options, two provided by statute and one provided by the case law and those are your options.

We don't think that the Hilton Head case can be read to mean that if a town declares an ordinance as invalid, it can stop there. Because the citizens have done their part, they have complied with the law. They have generated interest in an issue. They have gone out, spoken with their neighbors and other citizens,

and have agreed, 15 percent of them, they want to take action. That is -- that is a citizen's way of participating in a local government. They complied with that law. That's not disputed.

But what we don't think is lawful is for a town, itself, to decide that an ordinance is invalid and do nothing else. We think that if the Town thinks that the ordinance presented is invalid, then that is when they can seek a pre-election review of it. They can -- they can save the costs, the money, the energy of putting a potentially invalid ordinance up for vote by having a court determine that it's invalid and save themselves the time and expense of doing that, but the Town failed to do that here and that is the subject of our declaratory judgment action.

So I respectfully submit that Mr. Walker's arguments with regard to the mootness would actually address the substance of the ordinance, which is not what we have asked you to rule on today. We've asked you to rule on the process. We've asked you to declare that the process followed by the Town was not lawful, and to tell the Town of Sullivan's Island that when they are presented with a certified petition like the one they got here, that they have got to follow the law. They can't simply ignore it because that -- that

strips our clients of their statutory provided right to participate in their local government and it's not provided for in the law.

And Mr. Walker reads the paragraph, but I'm going read it again just because I think that it's --

THE COURT: I have it too. I can read it. You don't need to read it.

MS. RODE: Okay. Yes, Your Honor. The declaratory judgment action is the appropriate method to review the validity of an ordinance. And the reason that the Court -- and Mr. Walker admitted that the court has the ability to review an ordinance. We just think that the Town is the one that has to bring that action. It is not up to us, as citizens of a small town in South Carolina, to bring the issue of the validity of an initiated ordinance to you, to have you say, yeah, Town, you still have to go ahead and do what the law says you have to do, which is put it up for a vote or adopt it. So we're here because of the efforts of the citizens of Sullivan's Island.

We don't have the burden to prove the validity of the ordinance. We have the burden of complying with the statute regarding referendums. We've done that. So we've initiated this DJ action on that front, Your Honor. And we think that -- that the Defendants

misunderstand the holding in Hilton Head Island. We think that the law is clear on that issue.

As to the validity of the ordinance, I'll walk through those issues -- those are not before you. The Plaintiffs have not asked you to rule on the validity of the ordinance. I'll walk through those arguments as well.

THE COURT: You don't ask me to review -- to rule on the validity of the ordinance. How is there a justiciable controversy if it's not the validity of the ordinance? Isn't that the crux of everything?

MS. RODE: Well, okay, Your Honor, I'll speak to that.

THE COURT: Let me just ask you a question before you do that --

MS. RODE: Yes, sir.

THE COURT: Because, you know, you read these cases, and we all know as lawyers that you have to be careful of dicta. And sometimes it's very difficult to discern what's dicta and what's holding. And I'm not being critical of the authors, I'm just saying that it's just reality. But given what you're saying, assuming that as you stated in the -- we know that this is correct, the 15 percent, they met the statutory -- the 5-17-10.

MS. RODE: Yes, Your Honor.

THE COURT: They submitted.

MS. RODE: Yes, Your Honor.

THE COURT: And your basis is, that once that's done, that has to go to Court --

MS. RODE: Not -- no, Your Honor.

THE COURT: Well, that's what you're saying. Because the Council can't make a determination that it's a good, bad or anything else unless they take it to Court?

MS. RODE: No, I think if that was the way you understood my argument, then let me clarify.

THE COURT: All right. Please do.

MS. RODE: I think if -- if the Council is presented with an ordinance that they thought was appropriate, the statute 5-17-30 states that they can adopt it. Or, if they are not sure about it, they want to let the citizens --

THE COURT: But I understand all of that.

MS. RODE: Yes, Your Honor.

THE COURT: They can adopt it. I'm not sure they can change it, but they can also just say, we're not going to pass it, which is saying we're not going to adopt it. But you're saying before they do that, because it's been submitted, the statute mandates they

have to seek a declaratory judgment?

MS. RODE: If they're not going to submit it for a vote to the electors --

THE COURT: Then -- then please explain to me how in the world the language about -- and again, we can't -- we can't separate the validity aspect from the decision, because otherwise it -- certainly there would be no basis for this. But the court talks about -- and I'm quoting -- "a court should not compel the doing of a vain thing and the useless spending of money".

Well, in order for the Court to compel it, it's got to be brought to the court. They've already spent the money. So -- so what are we talking about? Somebody has to make that decision in advance.

The question comes -- and that's where -- that's why we get to a lot of the parts that are raised. You want me to say, basically, as I understand it -- and I'm paraphrasing you so just -- you want the court to say, look, forget about the validity, you didn't follow the proper procedure?

MS. RODE: Yes, Your Honor.

THE COURT: And you need, in the future, to do what you are supposed to do?

MS. RODE: Yes, Your Honor.

THE COURT: That's what -- that's basically what

you are saying?

MS. RODE: Yes, Your Honor. That's our first cause of action.

THE COURT: Because -- because what happens if I say they have got to do that, what do -- what do we do? We go back to square one?

MS. RODE: I think -- I think the issue that I feel like you're getting to --

THE COURT: Well, I mean, I'm just asking. What -- my ruling takes effect, yet you didn't do it. You need to submit it to the electors? And what do we do now? So we go back and we unbuild the school?

MS. RODE: No, Your Honor. I think we get the declaration that we've asked for.

THE COURT: What? You said -- you should have done that. My point is this: We all know -- somebody said this years ago at a seminar I attended. And maybe there's physicians in the room and I ought not to say this, but I'll say it. Asked what part of the anatomy has changed since all of us have been here today. And everybody said none, nothing. And said what law has changed since we've been sitting here today? And therein lies what we are talking about. What -- this case --

MS. RODE: Yes, Your Honor.

THE COURT: And I don't quarrel with you -- how you are reading it, says that. I don't -- I don't have any quarrel with that.

MS. RODE: Yes, Your Honor.

THE COURT: The problem is, is the Court saying -- and this is the part where they talk about what Mr. Kaynard testified to and what the Court talks about in its decision, and it's almost a separation of powers issue --

MS. RODE: Yes, Your Honor.

THE COURT: That you have a legislative responsibility to comply with the law?

MR. YOUNG: Right.

THE COURT: Then if somebody feels you haven't complied with the law, then you sue the entity or person and you have the court determine whether or not they did. Because there's no question, we would -- I don't think y'all will argue with -- I hope -- maybe you do. And I'm throwing this out to ask you to address this. Because I did, as a lawyer, represent municipalities. I represented the Berkeley County School District.

They called me for opinions and I gave my opinions. Sometimes they didn't take it and sometimes they did. But that's what legislative bodies do. They

seek the opinion of counsel to help them determine whether they are doing the legally correct thing or not.

The question for -- for --and it's almost semantics here, did Mr. Kaynard -- and I think he answered that -- did I determine that it was valid, that it was legal? No. I determined that's what we were going to do, that this legislative body was going to vote. And that's what we did. Now, it's up to you, Judge, to determine whether or not it's valid or legal.

I agree with you. They didn't determine validity. They determined this is how they were going to approach it for the reasons given and the reasons stated by counsel when they -- when they sought legal opinions.

My question to you is, basically what you're saying is this statute creates when -- when a body comes forward and submits an ordinance, any ordinance --

MS. RODE: Yes, Your Honor.

THE COURT: Because -- because you said we don't have to look to the validity of the order, so any order it has to be submitted to the voters unless -- unless they do something to change it. That's not -- we know that doesn't work, and that's not what the statute

says. That's not what they're talking about.

So somebody has to make if -- if you're going to comply with what the court is saying, to avoid putting people to a vote, to avoid creating all the expense associated with it, all the problems, somebody has to make the call. Who is that? It's the people who are elected to make the call based on that -- and how do we deal with that, and how -- how does -- how does the voters, how do they deal with that and address that when they don't agree with them? They vote them out of office just like they do every -- all over the United States every day. That's -- that's the protection of the person. The trump card here is did they violate the law. There's no question about that. And that's what we do.

Now, when they do something that's totally wrong and that's why I say we have to go to -- all of that is a long way to get to the point, I don't see how I can't rule without determining the validity of the proposed ordinance, the initiated ordinance, because I have to. Because that's what that statute says to me. And that's what that case says.

If you read the statute before -- before Hilton Head and I'On, I agree with you. It would say basically anything -- anybody submits if they have 15

percent. And we know that's not what the legislature -- and the court basically is saying that, no, that's not what we are saying here. There has to be some determination. Well, who makes that?

MS. RODE: Yes, but --

THE COURT: Initially the legislative body makes it. So I hear you. I understand what you are saying and we are framing it. I don't know -- I want to read -- I want to read the minutes. I want to read the ordinances that you've talked about, that has been submitted. I'm just asking you to address some concerns that I have about what this Hilton Head case said. But you've clarified to some extent your focus. You want my order to focus on the process itself?

MS. RODE: Yes, Your Honor.

THE COURT: Did they take the steps they were required to take --

MS. RODE: Yes, Your Honor.

THE COURT -- pursuant to the statutory scheme that we have under the initiated referendums?

MS. RODE: Yes. Who -- the question is, who has the power.

THE COURT: And I hear you. And I understand that. And basically you are not saying that, well -- am I hearing you say, well, we're not saying that, that

you have to address the ordinance anymore, because it -- I'm using this term, it is moot, is it not?

MS. RODE: Yes, Your Honor. The school is 75 percent built.

THE COURT: That's correct.

MS. RODE: The students are slated to start in August.

THE COURT: So there is no question about that --

MS. RODE: Yes, Your Honor.

THE COURT: So the mootness issue, insofar as the ordinance itself --

MS. RODE: Right, Your Honor, and I think that is why I started out my argument by saying that's not what we have before you.

THE COURT: I understand. And I appreciate your clarifying that, too.

MS. RODE: And I think another reason that this -- your order regarding the process could be significant to the town of Sullivan's Island, and as well as any other towns, is because this -- if the Town Council is allowed to operate the way that Town Council on Sullivan's Island did here, this will happen again. This could happen again. And you're going to have citizens who go out and follow the law, to get their

petition certified and sent up to the Council, and have it rejected.

THE COURT: What was the chronological -- again -- and I've got to read it. I know there's testimony. And I've got to go back, but you can help me real quickly. The lease was negotiated to build a new school?

MS. RODE: Yes, Your Honor.

THE COURT: And I know -- I think certainly witnesses testified that they were under the impression that the school would be -- well, the picture that was shown, number one, that would be consistent with the present situation.

The bottom line here is at what point -- and we start -- but before construction is brought, started -- I mean, at the time this order was submitted, there was no construction?

MS. RODE: That's true, Your Honor. It was the day that the Council signed the lease.

THE COURT: So my question would be, wouldn't the proper thing to say you didn't follow it, is to file a suit -- the suit that you have now, and say you can't do that. You can't do -- you can't take one step. And then -- and I've read the case that talked about -- there was some case that I saw, just reading

hurriedly and looking at the notes about injunctive relief being denied. And, of course, there was no injunctive relief sought here?

MS. RODE: There was not, Your Honor.

THE COURT: But clearly, clearly, as we have found and I think -- and I don't -- I'm not -- I still, given the choice of ruling on the motion to dismiss, I would still rule the way that I did because it basically just relied on the pleadings, and we didn't have a summary judgment motion.

I think a summary judgment motion could have addressed this very easily insofar as the process is concerned. And then all you had to do was you had to follow the process. You haven't taken the action. Whether or not somebody was hiding or not, I agree with your question, you can serve anybody you want. You don't need voluntary -- you don't need somebody to come forward to volunteer to create an action, to have one started.

I don't know what was talked about. I know there was some mention in one of the minutes, and I want to read them fully, but there was advice of counsel that it's a waste of time and money. At some point in time, a body that has a responsibility to its electorate insofar as tax dollars are concerned, has to

address that I think.

MS. RODE: I think that's a fair point, Your Honor.

THE COURT: And that that determination could be -- I mean, if we brought everybody in here, that's why I asked Mr. Young to confine his questions to Mr. Kaynard about whether or not that was the reason Council did -- that may be the reason he did, but everybody else may have been motivated by another reason. I don't know. That's the beauty of an elected body. They all consider what they feel is significant and important.

But the question that I have is, isn't the -- are we closing the gate after the horses have left. That's my concern.

MS. RODE: No, Your Honor.

THE COURT: Okay. All right. All right. And I understand what you're asking me to do. You're not even asking me to get to the ordinance, you're asking me to just say, you didn't do what -- you didn't do what the law requires you to do?

MS. RODE: The Town Council of Sullivan's Island did not give their citizens a voice --

THE COURT: And let me go to the next of why I went that circuitous route to get to there. The next

time they don't do that, do you think that this order is going to stop the next Council from saying I'm going to do it my way?

MS. RODE: I would think so, Your Honor.

THE COURT: If you believe that, then you -- and I appreciate that, and I don't know whether it's analogous or not, but I think about when I first started practicing law and being in a small town and had to do a lot of things. And now my brothers and sisters that are on the family bench, I'm delighted that where they are because I don't want to practice that law anymore.

But I remember my first case where I got a restraining order for my client. And two weeks later, she came in all bruised up. And I thought, well, but we had a restraining order. Well, guess what, people don't follow the law all the time. And that's reality. And that's why you bring lawsuits. And that's why you stop them. And that's -- therein lies where every one of us sit. We have that right in this country.

MS. RODE: Yes, Your Honor, that's why we are here.

THE COURT: I understand it, and I'm delighted to be a part of this. And I'll make a ruling and we'll frame it and try to couch it so that whatever side

feels that they were not -- that I'm incorrect, can take it and we'll have Columbia look at it and address it and we'll make some law. But that's the beauty of the process.

But the process -- just because we pass that, we also know the legislature can change this tomorrow, so can the court.

MS. RODE: Your Honor, we'll live with that.

THE COURT: I understand.

MS. RODE: We just want Council to follow the law.

THE COURT: And I understand that. And there is a view, and I know you don't agree with it because you're being an advocate, and that's what you're supposed to be. That's what I was. But there is another view, that they did follow the law. So that's what we will make a decision on. Okay.

MS. RODE: And, Your Honor, the only other point I would make is that the Defendants did not make a motion as to our 1983 claim.

MR. YOUNG: I was going to address that separately.

THE COURT: All right. That's fine. Okay. We'll do that as a second path. I know there is a second issue involved in this as well.

All right. Anything further on the issue of the ordinance itself?

MS. RODE: I don't think so, Your Honor.

THE COURT: All right. Do you wish to reply to that before you address the --

MR. WALKER: Yes. There's no way that the validity of the ordinance -- initiated ordinance can be extracted from the question before the court. The holding in Hilton Head says in holding for -- the Town has no duty to submit to invalid initiated ordinance to the electorates pursuant to Section 5-17-30. If it was invalid, they had no duty to submit it.

And what the Plaintiffs are saying is that regardless of whether it was valid, they had a duty to submit it. And they only have a duty to submit it if it's valid. And there's nothing for the court to determine if they aren't trying to obtain relief either through a referendum or forcing the adoption of the ordinance.

THE COURT: Let me ask you a question, Mr. Walker, and excuse me for interrupting. And I understand what you are saying. But when you -- when the body elected -- the body being the Council -- to file an action for declaratory judgment, which clearly I wasn't present when the counsel was giving advice

to -- when the attorney was giving advice to Council -- I can't use counsel and Council, because I'll get confused. When an attorney was giving Council advice concerning this issue, they filed an action, but they elected not to pursue it. Why would they file -- take their time and energy to file it, if it wasn't necessary?

MR. WALKER: Their decision was, they weren't going to rule up or down on it and they would let the Court decide it and they would engage it with the group that brought it. And so they were asking the Court to decide with the group that was advancing it, and then nobody came forward from the group.

And as Mr. Kaynard said, he didn't -- at that point, there was no adversity. And the group that was advancing it disappeared except for these random individuals who said we will litigate with you.

THE COURT: But my question is, we really don't have to have -- I mean, it's nice to have everybody that's involved, but basically what the -- the declaratory judgment is, you wouldn't have to name all of the citizens of Sullivan's Island, you would want to find out whether or not you have an obligation under this statute to submit it for referendum. And that was the purpose of filing the declaratory judgment in the

first place, was it not?

MR. WALKER: It was. It sought a determination as to whether it was valid and it asserted --

THE COURT: So why would you just stop then?

MR. WALKER: That was a decision that was made by Council and it's reflected in the minutes. That they wanted to litigate against the group. They didn't want to litigate against individuals. And persons who had promoted this ordinance said it was an abuse of power for the city to sue individuals because they would get bled dry --

THE COURT: I read some of that, but I want to read more. Excuse me for interrupting you.

MR. WALKER: No, that's fine, Your Honor. Their complaint does ask for an injunction. Their complaint does ask that the court order relief through forcing Council either to adopt the ordinance or to conduct a referendum.

On page six of the amended complaint, at the bottom, is their prayer for relief. And prayer two says -- asks the court to grant Plaintiff's injunctive relief in the form of an order of the Court or Writ of Mandamus directing the Town of Sullivan's Island to adopt the proposed ordinance or hold a public referendum as required by the law of South Carolina.

So that issue is alive in the pleadings. We think we are entitled to a judgment as a matter of law on that for the reasons I've said, because it's invalid and the law doesn't enforce the performance of a useless act.

And I was saying earlier, and I'll hand up this case and provide it to -- to opposing counsel, the West Palm Beach Association of Firefighters case, which is one that our Court cited right after saying that they encouraged the declaratory judgment, the finding is to be ultimately made by the Court.

In that case, the municipality did not initiate the action. It was brought by the contestants. And the Court did not find that since the municipality didn't bring the question, that it had to be decided against them. And that's basically what their argument here is. You are in default, they're saying. You didn't go forward, so we have to have this referendum.

Now, they say, well, we don't want the referendum, even though their Complaint says we want the referendum. We just want you to say that they violated the law. Well, to say they violated the law, when there is no specific relief that's being accomplished, if they are now withdrawing their allegation, their request that you order the Town to have the referendum or you order the Town to pass the

ordinance, if that's what they're saying, then there's nothing for the Court to rule on. There has to be some live controversy other than we just think they did a bad thing. There has to be some relief enacted. And that's what they asked the court to do in prayer two.

Now, back to the question of was there a violation of their rights. They brought a 1983 action, which is their second cause of action that we were going to address second, and I want to address it now. And as we have briefed in our pretrial brief, there's a 4th Circuit case directly on point.

That case says that simply because the municipality does not proceed with the referendum, does not violate a right to vote. The right to vote is a right when you go to the polling booth to vote. It's a right -- you are stopped from exercising your right to cast a ballot. The failure of the municipality to proceed with an ordinance is a legislative act. It's not the act of a voter going to the voting booth. And the 4th Circuit stated unequivocally that does not implicate any right to vote. There is no violation of the right to vote.

They have a loosely alleged claim for violation of due process. At times, they say it is procedural due process. At other times, they say it's substantive

due process. I don't think they've made any case for a substantive due process violation, where they had a certain property right that was deprived to them under state law.

Procedural due process, we're right here. We're in the Court. Procedural due process is noticing an opportunity to be heard. That's what's going on right now. When the Court rules on the validity of the ordinance, which is a threshold question, that is their opportunity to be heard. And they've had a right in this Court to argue, present testimony, everything else. So we don't see that there is any due process right implicated, either procedural or substantive.

THE COURT: Okay.

MS. RODE: Thank you, Your Honor. I'll quickly respond to just a couple of points --

THE COURT: Sure.

MS. RODE: -- Mr. Walker made and then address our 1983 claim.

He again referenced the Hilton Head Island case, and that's the important, we think, dispositive case of the issue. And Mr. Walker again stated that you don't have to put an invalid ordinance on a referendum. And we -- and I want to make the point that we agree with that.

And maybe I made this point before, but I'll make it again, if the Town thought that this proposed ordinance and issued ordinance was invalid, they didn't have to put it on the ballot, they had to follow through with a DJ action that they initiated and get the Court to say it's invalid. Otherwise, we think this statute very clearly reads you've got to put it to a vote or adopt it. And that's really all I had to say about that.

We aren't seeking injunctive relief --

THE COURT: So let me -- before you move to the next -- let me be sure I understood what you just said. So if the Council, any Council, any legislative body seeks an opinion and the opinion of counsel, the attorney, is that this ordinance is invalid, it's your belief that this -- this ordinance, this statutory scheme -- or excuse me -- this statute 5-17-30 requires -- it can't just stop there with a legislative act saying you choose not to adopt this ordinance or just simply not acting on it. It's your opinion that that statute requires every legislative body to institute an action to have it declared invalid to basically confirm what their determination is, that it's invalid?

MS. RODE: I think that's what the Hilton Head

Island case stands for, yes, Your Honor.

THE COURT: All right. I just want to be sure that we are framing it, because that's what you are saying. That a legislative body, where they have voted and said, we're not going to do this because we think it violates -- we think it's an invalid ordinance, now the next step we have to take is to file an action in court?

MS. RODE: Or submit it to a vote, yes, Your Honor.

THE COURT: To confirm our determination as a legislative body?

MS. RODE: Yes, Your Honor.

THE COURT: Okay. All right.

MS. RODE: If they are not going to submit it to a vote.

THE COURT: All right. Thank you.

MS. RODE: As to our 1983 -- or wait -- let me back up for one second. We're not seeking an injunction. That was something that I think might have been discussed a long time ago. But when you're looking at a $25 million dollar project of a new school --

THE COURT: But you would agree it's in the Complaint?

MS. RODE: Yes. Yes, Your Honor.

THE COURT: Okay.

MS. RODE: But we're not seeking it now.

THE COURT: I understand.

MS. RODE: I think that's really all I need to say about that point.

One other point as to the validity of the initiated proposed initiative, we contend that by dropping the suit that they filed, that they waived their argument as to the validity of the proposed initiative. And at that point, if they decided it was invalid, they should have continued through with that action and proceed to get a ruling at that point. By voluntarily dismissing the suit on their own accord, we think that they waived their right to make that argument.

As for the 1983 claim, Your Honor, they are right. There is a 4th Circuit case that addresses the right to a referendum as compared to the right to vote. I think we just -- I just like to point out that the -- Judge Duffy's case in the 4th Circuit, and the case that is decided from the 6th Circuit, all deal with the limitations placed on collecting a signature, certificating the signatures. Sort of mechanical steps that are in place to ensure some dignity and integrity

in the process of organizing to petition for a referendum. So those cases we do not think are directly on point. And thus you should be able to maintain a violation of our client's right to the vote.

The second, we are pursuing an action for procedural due process. And the process that we are maintaining -- we are not getting that process today by showing up in court and initiating this lawsuit and coming here and making these arguments to you. We maintain that our -- that the due process right was violated at the point the Town didn't follow the law as we've discussed at length, when they did not either submit the initiative to a vote or continue to get declaration from the court as to validity --

THE COURT: Isn't that what's happened even in the Hilton Head case? I mean, that is the due process.

MS. RODE: No, Your Honor, that's the opposite --

THE COURT: Well, no, ma'am. I'm just simply stating to you -- you argued -- you said this today hadn't got anything to do with it --

MS. RODE: This is a separate process --

THE COURT: It certainly does. It has a lot to do with it.

MS. RODE: I --

THE COURT: The due process was the right to appear, the right to be heard, the right to submit it. I mean, again, this -- again, we go back and it all seems to come -- dovetail all neatly together. It's your opinion that once -- and I just -- just once anything is submitted, the legislative body has lost its right to act?

MS. RODE: No, Your Honor.

THE COURT: Well, they can't -- they have -- they have to go to court before they can act? They have to go to the judicial branch to prove their action before they do it?

MS. RODE: Depending on the action they want to take.

THE COURT: No. I'm getting -- anything that's submitted by way of -- any petition submitted by the 5-17-10 --

MS. RODE: Yes, Your Honor.

THE COURT: Then in order to -- in order for them to act, they have to file the action under 5-17-30, which you say Hilton Head requires for them to act?

MS. RODE: If by act you mean they don't want --

THE COURT: They can't -- you're saying any act

taken by them --

MS. RODE: No, your Honor.

THE COURT: -- prior to the approval would be invalid?

MS. RODE: No, Your Honor.

THE COURT: Well, that's what you said.

MS. RODE: I -- with all due respect, that is not what I said.

THE COURT: I mean -- I mean, you said they cannot take an action until they have had the declaratory judgment determined?

MS. RODE: If the action they want to take is to not adopt it or not put it to a vote.

THE COURT: That's what I'm saying. So they are bound -- they can't function independent of the voters is what you're saying? This sets up where the legislative branch has been denied the right to take action because the voters have submitted a petition and now you can't -- you either adopt it or you refuse it, or you adopt something contrary, but there is nothing else you can do other than that?

MS. RODE: Yes, Your Honor.

THE COURT: So you basically say this is -- this has tied the legislative body's hands, right?

MS. RODE: If the municipality does not want to

submit the ordinance to the electorate --

THE COURT: They can't take any action on the subject matter?

MS. RODE: They need to get pre-election review.

THE COURT: Before they go to court?

MS. RODE: Yes, Your Honor.

THE COURT: Okay.

MS. RODE: Yes, Your Honor. So that is the process -- because we think that's the law. We think when you don't comply with that process, that violated our client's constitutional rights. And that they shouldn't have to come to court themselves today when the onus should be on the Town Council and ask for a ruling on this issue. That's why the two processes are separate in what we're seeking with our 1983 claim, Your Honor.

The only other option that -- that the -- our clients would have would be to give up.

THE COURT: No. They could differ with you. They have just brought us here today.

MS. RODE: Right, Your Honor, when the school is, you know, it's 75 percent built --

THE COURT: No. Again, that -- you said the action has injunctive relief for it. You chose for whatever reason not to follow it.

MS. RODE: Yes, Your Honor.

THE COURT: Had you sought that, it might not have been 75 percent built. It might have been nothing; correct?

MS. RODE: Yes, Your Honor.

THE COURT: Okay. So, yes, they have suffered. They made a choice. And I don't need to know why. That's up to them. That's up -- but to say that their hands are tied and they have no rights is not a fair statement because they do. Under our law, they have every right that every citizen in this country has, to bring a lawsuit and bring it to court and say, look, stop, this is a travesty. This is wrong. You can't do this. And that's why they brought this action, to say you can't do what you are trying to do?

MS. RODE: That's right, Your Honor.

THE COURT: So, yeah, they have rights. And they haven't been violated. Nobody has deprived them of that. That's why I say, you can't remove this -- what's happening here today from your due process argument. You really can't. Because that's how it's determined. I mean, obviously they don't get to determine that. And the legislative body doesn't get to determine that. That's the separation of powers issue. The court does and that's --

MS. RODE: Right, Your Honor.

THE COURT: And that's the system. So, yeah, they have --

MS. RODE: And we just think that the system requires that the Court's involvement should have come much earlier and that's our point.

THE COURT: It could have. It could have. It was there available, was it not? Could have been a TRO?

MS. RODE: Yes, Your Honor.

THE COURT: It really could have been.

MS. RODE: If the citizens of Sullivan's Island --

THE COURT: You talk about irreparable harm, if you think I'm being violated and my rights have been violated, then stop this until the Court has determined it. I mean really. I can't think of any -- any clearer example that a Rule 65 TRO wouldn't have applied. But, again, I'm not faulting anyone, I'm just simply saying there were decisions made and multitudes of reasons.

I -- I pray I never forget practicing law and what -- the experience of it. And I understand that. I dealt with those issues as a lawyer for 21 years and I -- I thought at one time like that I'd love to go

back, but now seeing how complex it is, I think I will stay right where I am and try to muddle through some way.

MS. RODE: Yes, Your Honor. We -- we just think that the process should allow the residents of Sullivan's Island to have a voice in the referendum process. And that's what they were denied and that's why we are here, Your Honor.

THE COURT: I appreciate it.

MS. RODE: And thank you.

THE COURT: Thank you. Response, Mr. Linton?

MR. LINTON: Yes, sir. On the 1983 action, the Kendall case did have to do with the actual technical requirements that that state had for initiating referendums and the amount of signatures.

However, what the court addressed was whether there is a fundamental right to initiate legislation. They determined there was not and that the right to vote was not implicated. So while there is a practical difference, the case is completely on point here.

Additionally 42 USC Section 1983 only provides relief for violations of the United States Constitution and Federal statutory law. So to the extent of the Plaintiff's claim to rely on violations of state law, that statute doesn't provide any relief.

As mentioned in the Kendall case, even if there was relief for substantive due process violation, it is only that substantive due process which is provided in the Federal Constitution, which is not implicated here. I think the discussion has already covered procedural due process sufficiently, so I won't review those details.

THE COURT: Thank you. Any response?

MS. RODE: Can I make one point, Your Honor?

THE COURT: Sure.

MS. RODE: Because I want to clarify one thing Mr. Linton said and then I promise I'll sit down.

THE COURT: You don't have to do that.

MS. RODE: As to the protections that fall under 1983, the case law is clear. It is clear that we've got to demonstrate a deprivation of a right to life, liberty or property. The case law is clear that the liberty interest encompassed in procedural due process can be create by state law.

We see that a lot of times -- there is a US Supreme Court case that deals with state laws created in prisons, where you can shorten your sentence based on good time served. That that is a state created liberty interest that is protected in section 1983, which is exactly what we have got here with the

statutes we have discussed at length. So that would be one point I would like to make. Thank you, Your Honor.

THE COURT: Thank you very much. Anything else?

(No response.)

THE COURT: Thank you all. Since this is a nonjury case and I never thought I would have an opportunity to do this, this is at the half way point. I didn't try that many Federal cases, but I remember one of them that we had, we didn't realize that -- maybe it's not the case anymore, but criminal cases took precedent over civil cases. And we were in the middle of one, and there was a day certain case that would start, so we adjourned and came back about three, three and a half weeks later, and started back again.

It's not going to take that long, but with all fairness to everybody, I want to read this submission and then if I deny it, then obviously I will afford you an opportunity to go forward if you choose to.

MR. WALKER: Thank you, Your Honor.

THE COURT: You may -- you may simply say the record is fine, but I just want to make that clear. Should I -- if I grant it, then obviously the record, we have it all, and I appreciate that. As I understand, what I have now is the record?

MR. YOUNG: That is correct.

THE COURT: Okay. All right. Thank you all very, very much I appreciate it. I'll be in touch.

(Whereupon, the hearing adjourned.)

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* * * P R O C E E D I N G S * * *

May 16, 2014

THE COURT: Thank you all for coming. I assume everybody is here. It's a little before 10:30. Is everybody here that we need to have present?

MR. YOUNG: I believe so, Your Honor.

THE COURT: Okay. Thank you all very much and I appreciate it. Let me preface what I'm about to say with something -- and I'm not just saying this because -- just to be political. It's -- the older I get, the more I realize what a privilege it is to serve and where I serve and what a privilege it's been over 40 years now to be a member of the profession that I hold a high regard. And what a great privilege it is to be -- to work for persons who represent that profession as honorably and professionally as you guys, and you lady, you too, and you as well, Mr. Kaynard as well. I thank you for that. It makes it all good as Pete Strom says a lot of the times, but this -- all the work that was evident from yesterday and certainly the exhibit notebook supports what I've just said, and so thank you for that.

And I'm prepare today to rule. I agree across the board -- and you say what in the devil is he

saying. First of all, thank you for the opportunity to sit down and read this and it just goes to show you that you just need to think about it. And I think I was on it, I just didn't -- it didn't hit me until about 4:00 yesterday.

It is a separation of powers issue and that's really -- they don't really -- they talk about it and they mention it, but it truly is. Legislative bodies can't become judges and judiciary. And judiciary can't legislate. And so -- I understand that.

The -- and that finally when reading the West Palm Beach case, which they cite, it just hit me right square between the eyes because that's what it says. And, in fact, it says when it talks about the approach, it says the City cannot itself pass on its validity. And that's what the -- that's what the law says and that's why they created the statute.

Now, granted they gave a broad brush, said any ordinance, but then they started taking away and we see that constantly, insurance policies are good for that. We insure everything. And then on about page 55, they say but we don't insure this.

So over the passage of time, we'll continue to tweak this statute, but it's a realistic system. And I appreciate the people in the town of Summerville (sic)

and I know everybody here does, for doing what exactly the law says you can do. And that is to say, I want to be involved. I want something done. And you submit it. Then it's up to us, because most -- while you had lawyers involved, most of you don't -- aren't lawyers, and that's not a criticism, that's just reality. You're good at what you do and I'd be a lousy teacher. I'd be a lousy school administrator.

I taught a course at the School of Law at the Citadel, but after about four years, I wasn't asked back, so that's proof positive I probably didn't do a very good job.

But clearly that's what the legislature intended. But -- and that's what this West Palm Beach case and our case talks about. It's not just a carte blanche right to submit. We have to have -- because typically -- and they talk about that -- typically the court doesn't get involved in interfering with elections and that sort of thing.

I -- it's sort of a -- a connection when I got involved with the school district, how they were going to draft the vote -- the ballot, I think, was what it was. And they reversed me and said, you can't mandate a school district to do that. That's up to them. That's their right. And I understand that and that was

correct.

But the bottom line here is there's no question, any Town Council, in my opinion, they can have the opinion and they were absolutely -- because as I said, I agree. I think reading the ordinance, it's facially defective. There's no question. They can't do what they are asking them to do.

And it's for all of the reasons set forth -- we don't need to get to mootness, because everybody agrees, we accept where we are. There's no question that for all the reasons you've outlined, are supportive of why the ordinance is defective on its face. And therefore, the Town was well within their rights, and that's my ruling, of not submitting it to the voters for a vote.

But did they have to do that, to submit it to the court? Yes, they do. They have to do that, every single time. If they want -- I say every single time, obviously -- it's kind of like imposing a sentence which is not consistent with the law, and you ask -- people say, you can't do that. And I said, are you going to appeal? And they say no. Then I say, okay. That's fine. That becomes the law.

Can they do it if nobody makes them, pushes the issue? Sure, they can. Will they do that? Probably.

But does the law require that to be done to have it declared to be defective? Yes, it does because it needs to be because we are dealing with something so important. That is the right of people who are citizens to vote, to submit something for their consideration. It doesn't give them free reign, but it's a right to submit it and the court has to ultimately address it if they do.

The question now becomes, and you've raised that, and interestingly enough the West Palm Beach case really does set it out nicely I think. And I'm quoting from it, because it says, "this is the preferred procedure. That is, you, the Town, seeks a declaratory judgment", which you did by the way. You filed it.

Now, admittedly, you didn't serve it. I understand some of the problems associated with that, but subsequent to that, and this is where it really comes into -- it really doesn't matter. Because subsequent to that your action was filed, I think, in February of 2012. You didn't dismiss it until April of 2013.

This present action was filed in October while that action was pending. We know you could have asked to intervene, you could have asked to join. You could have said let's consolidate the two actions because

they both seek the same thing.

Why did you not pursue yours? Well, there wasn't any need to. Because now you had the parties all aligned. You had the people necessary to make the determination which makes practical sense to me. It's just logically that you would do that, just go ahead and file our answer and we'll litigate in this action, the issue.

What is the issue to be litigated, whether or not it's valid -- whether or not it's valid on its face. That's what we are here to do. And that's what this hearing is all about. So I rule that it's not. It's facially invalid.

Then that puts me to the 1983 action. I think the case you cited is on point, but I think -- we are in the process. This is the process. Should it have been done and could it have been done in October of 2011 or whenever they approved it? Sure, they could. And let me say this, too, because I noticed -- I want to make this clear because sometimes people hear something.

I'm not suggesting that when you filed your action in September of 2012 -- which you had every right to file -- there was nothing untimely about that. I made a comment about a TRO. That would have been an

action filed, which could have been filed the day after they refused to do anything. After they passed it, you could have filed an action and probably gotten a TRO then without any question because -- or at least you would have had a hearing to determine that as to whether -- and maybe at that point, the issue would have been addressed right off the bat because it would have been before the court in that situation. It could have been before the Court.

So I wasn't implying that you failed to do something. I want that clear. Because I did not say that. I don't think you did anything improper at all in presenting this case. On the contrary, I think you presented it extremely well. Because I said, well, you know what, he asked me to do something. I basically am doing it somewhat and saying that you have to do that. I agree with you. I don't disagree with your argument, the statutory scheme requires an action to ultimately be, if necessary -- if the Town thinks it's necessary to assure their position then -- and I think it would be prudent. But again, that's the Court. I don't get into telling the Town what they need to do or not do. I think the judge in this case said that's the preferred method. But is it the only method? No, it's not.

So if you'll -- now, having said that, the reason I wanted you back was that you wanted to address the issue of whether or not the Town has -- my finding that the statute requires that to be done, I'll be happy to hear any additional testimony you want to present, but that's the rationale. If you want to talk, confer, that will be fine too. But that's -- that's what I wanted you -- to afford you that opportunity, if necessary.

MR. WALKER: Your Honor, I don't think we do, but I would like to confer --

THE COURT: Absolutely.

MR. WALKER: They may want a minute too. If we could have five minutes?

THE COURT: Absolutely. You all talk among yourselves. There is no question the exhibit and the -- much of this -- much of what I've stated is supported by the documents that I've reviewed in -- in this --

MR. WALKER: My first reaction is just that the record really is in the documents.

THE COURT: It is.

MR. WALKER: And anything we put up --

THE COURT: Would just be cumulative --

MR. WALKER: Would just be to identify events

that are already in the record and accounted there, so I don't think so. But let me make sure.

THE COURT: Okay. Well, y'all take a moment and that will be fine. Thank you so much. I appreciate it.

(After a brief recess, court reconvened.)

MR. WALKER: Your Honor, thank you for giving us a few minutes to confer.

THE COURT: Sure. Yes, sir.

MR. WALKER: Based on the court's indication that it's going to grant our motion for involuntary nonsuit, we are not going to put up any proof.

THE COURT: Well, that's what -- it's really not a nonsuit because I'm ruling. Because I think -- I think, and that's why I'm doing it, it's a declaratory judgment action that everybody is asking and I'm declaring it.

MR. WALKER: Well, then in that -- in light of that, then we are going to offer no proof and rest on the proof --

THE COURT: Thank you.

MR. WALKER: -- in the record --

THE COURT: Now, we're talking.

MR. WALKER: That was submitted by the Plaintiff's and manifested in the exhibits, our

testimony would simply be an amplification of what the court already has. And I don't think there's anything that we would need to add on the legal and effectiveness of the initiated ordinance or anything like that. So we are satisfied that the proof is before the Court to adequately support the court's ruling. Thank you.

THE COURT: Very good. Now, do you wish to offer any reply testimony since they've rested on the record?

MR. YOUNG: No, sir. But in our -- I do have a few questions.

THE COURT: Sure.

MR. YOUNG: I understand and appreciate that we are going to -- that they had an opportunity to put on whatever they wanted, and they're going with these documents. That was one of the issues I have.

I also understand that the court is ruling that -- on our declaratory judgment, there will be a written order forthcoming?

THE COURT: There's going to be an order forthcoming that's going to declare that, number one, that the position and statement that under the statutory scheme, it is my opinion that Council can -- can have an opinion. They are entitled to say it's

facially defective and refuse to do something and act accordingly.

But before it is -- it meets the statute muster, the court has to ultimately make that determination. Because otherwise, if it -- if -- the obvious is there. If the court says no, it's not facially defective, then it has to go and it has to be submitted to the voters.

In this case, this one doesn't because it's -- for the reasons -- and the reasons I want you clear -- you've briefed them thoroughly. And I'm talking about when -- the part on page 11 in your pretrial brief that deals with the initiated ordinance and the four reasons that you've set forth why -- I say that -- excuse me. Yeah, it's really on page 10, the four reasons that you've listed are all supported by the evidence in this case in my opinion.

I think it falls into all of those categories. I think a hodgepodge of all of them. And that's my ruling, so.

MR. YOUNG: I understand, Your Honor, and I think -- I want to be sure -- I think the pretrial brief was filed -- I hope it was with the court. Let's file it if it wasn't.

THE COURT: Well, if it isn't, I'm going to put both of y'all's in because I've -- I've used them and

referred to them. I'm just going to make sure both of them -- are yours --

MR. YOUNG: Is that okay with you guys?

MR. WALKER: Yeah, we're fine with filing it after the fact, too.

THE COURT: That's fine. We'll file it. I'll tell you what we'll do, let's make the pretrial briefs, for purposes of review and the positions that you have taken in those briefs, you're now incorporated fully in the record for the purposes of review, because they have now become Court's Exhibit No. 1.

MR. YOUNG: Thank you, Your Honor.

THE COURT: Collectively.

MR. YOUNG: Yes, sir. And the other minor issue is I just want to make sure I understand the court's -- the secondary ruling is that we've raised a claim for a violation of procedural due process, but the court's finding is that there is no merit to that?

THE COURT: I think the reasons set forth in their brief for the dismissal, for denying that, are the basis -- the bases for my denying -- for granting that.

MR. YOUNG: Yes, sir.

THE COURT: They've outlined their position. And you've articulated your reasons for going forward

certainly, very clearly.

MR. YOUNG: Yes, sir. And then so -- just to be sure I understand, we anticipate a written order as it comes out. And then if we have post trial motions, we make them after that --

THE COURT: I would ask -- first of all, I would ask -- assume, Mr. Walker, you'll be preparing that order, your office. If you would submit it to Mr. Young when you submit it to me, I will give you time to review it and respond before I sign it. In fact, I'll -- I'll await -- and whether you say you agree, you don't necessarily agree with the decision, but you don't need to change the order in any fashion. And I'll sign it. And then you may file your post trial motions.

MR. YOUNG: Thank you, Your Honor. Yes, sir.

THE COURT: Everybody is clear on that, insofar as -- insofar as appeal times running?

MR. YOUNG: Yes, sir.

MR. WALKER: Thank you, Your Honor.

THE COURT: Thank you very much. I hope you all have a good weekend.

(COURT'S EXHIBIT NO. 1 RECEIVED INTO EVIDENCE.)

(Whereupon, the hearing was adjourned.)

CERTIFICATE OF REPORTER

I, SHARON D. JONES, OFFICIAL COURT REPORTER FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 15TH AND 16TH DAY OF MAY 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JULY 1, 2014

_____

SHARON D. JONES,
OFFICIAL COURT REPORTER

We, the undersigned, do hereby request that no further action be taken by SI Town Council on the approval of the proposed lease for Sullivan's Island Elementary School. We emphatically support the rebuilding of a new school, but only one that will be of a more appropriate size and scope for our historic, residential community. All of Sullivan's Island's residents deserve to be heard on this issue with full transparency.

We ask that our Town Council stop any further action until:

1) The impact of any proposed school has been evaluated (water, sewage, traffic);
2) The public has been fully informed of the results of the evaluations;
3) It has been determined that any proposed school complies with established design guidelines for neighborhood compatibility, as stated in the public ordinances of the Town of Sullivan's Island (Article XII, Design Review Board, Section 21-111);
4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
	2105 PETTIGREW St.
LRAdams	210 Sta 28½
	210 STA 28½
Courtney Adams	210 Sta 28½
Susan Poulnot	2819 Marshall Blvd
David Poulnot	2 "
Kathleen Harris	2901 Jasmine Cove
Fleming Harris	2901 Jasmine Cove
	2924 Middle
	2924 Middle
	2854 Middle
M. Nelson	2856 Middle St.
	2608 ATLANTIC AVE

PLAINTIFF'S EXHIBIT

TOSI 00195

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
Ellison D. Smith IV	1908 Flag St, Sullivans Is.
Martha J. Smith	1908 Flag St., SI
Marilyn B. Goldstein	194 Station 19, S.I.
Herb Goldstein	194 Station 19 ST. SI
Cynthia Pearlman	3010 Middle St.
Stephanie Smith	1908 Thee St.
Tamra Davis	933 Middle Str.
Blair S. Hogue	3104 Marshall
Daniel R. Hogue	3104 Marshall
	1902 Flag St
	1857 Flag St.
	" " "
Diane R. Cartledge	2656 Jasper Rd

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
✓ B. Th[illegible]gh	1813 Rock St
✓ [illegible] Clarke	1801 Back St, SI
✓ [illegible]	2807 Marshall Blvd
✓ [illegible]	11
✓ [illegible]	1616 Poe Ave
✓ [illegible]	1656 "
✓ Joyce Schweitzer	1612 Poe ave
✓ [illegible] Wood	1434 Thompson
✓ [illegible]	1408 Thompson St
✓ A R Wood	1408 Thompson St.
✓ [illegible]	1406 Thompson AVE

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
Edward R. Crawford	1013 MIDDLE ST.
[illegible]	1118 Middle St.
[illegible]	11 " " 4
[illegible]	1312 Middle St.
[illegible]	1312 Middle St.
[illegible]	405 Station 12
[illegible]	405 Station 12
[illegible]	226 Station 19
[illegible]	226 Station 19
[illegible]	1813 Back Street
Gloria Howard	1820 Central Ave
Mark Howard	

13
10
90
102

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NAME	ADDRESS
Susan [illegible]	402 Seabreeze Ln. SI
[illegible]	402 Seabreeze Ln SI
[illegible]	405 Ed Bearden, Sullivans Isl S.C.
[illegible]	1026 Middle
BKey	"
[illegible]	1914 Central Ave
[illegible]	1908 Ion Ave.
Hal S. Currey	1768 Atlantic Ave
Margaret P. Schaechtz	1768 Atlantic Avenue
David T. Spell Jr	1702 Atlantic Ave SI
Helen Spell	1702 Atlantic Ave SI
Stacy R. Whitaker	1715 Atlantic Ave
Lorna Yuhr	3014 Ion Ave.

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
Karen Coste	322 Station 19
Charlotte Collins.	1908 Ion Ave.
Leo Tate	2668 Middle
Neera	305 Station 20
Keith Lam	2415 Middle St
Judy P. Nelson	321 St 19
	321 st 19
	322 Sta. 19
Anna Spell	1702 Atlantic Avenue
Dellamonte	2871 Ion Ave
Bonnie C. Williams	2513 Ion Ave.
Roy Williams	2513 d'on Ave.
	2408 Ion Ave.

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
✓ Stephanie Aston-Jones	2624 Ion Ave
✓ Carl Aston-Jones	2624 Ion Ave
✓ Connie S. Hogan	2614 Atlantic Ave
dup. ~~Alice S. Boyle~~	2724 Ion Ave.
✓ Carter Lupton	2829 Marshall Blvd.
✓ Eleanor P. Daly	2408 Raven Drive, S.I.
✓ Clydie deBrux	1903 Back St, S.I.
✓ Susie deBrux	"
✓ Charlotte Lunsford	1856 Ion Ave
✓ Brantley deBrux	1903 Back St
✓ [illegible]	1726 Atlantic
✓ [illegible]	1689 Middle
✓ STEVE HAMONTREE	2871 ION AVE

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4) All island residents have been provided an opportunity for input at a public forum.

NAME	ADDRESS
✓ Fred Wszolek	3014 Ion
✓ Emily Molter	3024 Ion
✓ R W Molten Jr	3024 Ion Ave
✓ C M Keyserling MD	223 Station 31
✓ Connie Leopold	223 Station 31
✓ Joseph Weyrich	3024 Marshall Blvd
✓ Jacqueline Wequich	3024 Marshall Blvd
✓ Penny Cupolino	2851 Middle St
✓ Mark Angelino	11
✓ Tommy Silver	2830 Atlantic
✓ Vivian Silver	2830 Atlantic
✓ Chris Richardson	2820 Jasper Blvd
✓ Peter Leland	2820 Jasper Blvd

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NAME	ADDRESS
Elizabeth P. Gregorie	2803 Harvey St.
Angelica Lowe	2608 Atlantic Ave
[illegible]	1652 Thompson Ave
Jeri B. Weigand	2014 Middle Street
[illegible]	2014 Middle St
Janet T. Bryan	2018 Middle St
Jane Murphy	131 Thompson Ave.
Nicholas Murphy	" "
Eugene S Blanchard	1305 Thompson Ave
Jane D Blanchard	1305 Thompson Ave
Jill M. Crawford	927 Middle St.
[illegible]	927 Middle St
Anne C Crawford	1813 Middle St

Registered Voter Original

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NAME	ADDRESS
EA Scarpa III	2102 Atlantic
Carolyn Scarpa	2102 atlantic
Mary R. Blanchard	2002 Central St
M K Daly	829 Middle St
[illegible]	829 Middle St.
[illegible]	835 Middle St.
Keith Hare	907 Middle St.
Mary Meehan	411 Station 13 St.
Dorothea Funk	411 Station 13 St.
William Meehan	411 Sta. 13th St.
Roger Tyge	403 STA 13 ST
Martha Tyge	403 Sta 13 St.
Ann Gay	848 Middle St.

Skip Scarpa
2102 Atlantic

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NAME	ADDRESS
C. C. D.	848 Middle St.
Barbara Roberts	9-11-11
Kathleen Wood	2209 Atlantic Ave
Martha McNeill	2057 middle 2nd fl
Mary McJones	2302 Raven St.
Lyle Scott	2618 Goldbug Ave.
Tommie Moore	2320 GOLDBUG AVE
Betty Jane Dillon	2320 goldbug Ave.
Marilyn Rumph	2925 ION AVE
Kathryn E. Link	2215 Ion Ave
Laura Jane Arthur	2836 Middle Street
J. B. O'Cain	2023 MIDDLE ST.
Barbara Lowe	1908 Central Ave

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NAME	ADDRESS
✓	2252 Jasper Blvd
✓ Richard A Graham	2102 Ion Ave
✓ Ann M. Graham	2102B Ion Avenue
	House next to the ath
✓ Robert J Graham M	2108 Ion Ave
✓ Anne L Graham	3118 Oak Ave.
✓	2402 Goldbug Ave
✓	2301 Atlantic Ave,
✓	2872 Marshall
✓	2872 Marshall
✓	2872 Marshall Blvd Apt B
✓	3122 Ion Ave
✓ PAT VOTAVA	2214 Jasper Blvd.

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NAME	ADDRESS
J. STANLEY CAMPBELL	2102 PETTIGREW

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NAME	ADDRESS
Hazell O'Cain	2109 Pettigrew St Sullivan Island SC
Thomas McCain	2109 Pettigrew St., SI

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NAME	ADDRESS
	1401 Middle St.
	2502 Raven Dr.
	2430 Raven Drive SI
	1659 Atlantic Ave S.I.
	1659 Atlantic Ave S.I.
	1754 Poe Ave
	1620 Poe Ave
	1620 Poe Ave

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NAME	ADDRESS
✓ KATHLEEN Post	1907 ION AVE.
✓ Edith Geoklan	1424-B Pt Ave
✓ Dori Chitayat	1902 ION AVE.
✓ ember Chitayat	1907 ION AVE.
✓ Shannon Chitayat	1902 Ion Ave.
✓ Will Post	1907 ION AVE.
✓ Kay Park	1918 Ion Ave
✓ MICHAEL MATTHEGER	407 ONEILL ST
✓ Dennis Matthews	407 ONEILL ST
✓ JUSTIN POST	1907 ION AVE.
✓ CECELIA POST	1907 ION AVE
✓ Lila Trussler	1650 Atlantic Ave
✓ Robert Trussler	1650 ATLANTIC AVE

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NAME	ADDRESS
Sheri Cook	2808 Ion Avenue
Ron Cook	2808 Ion Avenue
Summer Cook	2808 Ion Avenue
Peter Cook	2808 Ion Avenue
Clyde Timmons	1413 Middle St.
Carlin M. Timmons	1413 Middle St.
Mark Tyrell	813 Conquest Ave
Dennis Christensen	813 Conquest Ave
[illegible]	1505 middle ST
Helen Elam	" " "

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NAME	ADDRESS
Sass Schirmer	1857 Flag St Sullivans Isl. SC
Frances N. Roosevelt FRANCES H. ROOSEVELT	2662 Bayonne St, SI
Mike Carroll MIKE CARROLL	1308 Cove Ave, SI
Elizabeth Carroll ELIZABETH CARROLL	1308 Cove Ave, SI
	~~410 Patriot, SI~~
	~~410 Patriot, SI~~

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NAME	ADDRESS
Hazlett Oldham	2109 Pettigrew St Sullivan Island SC
Amanda Oldham	2109 Pettigrew St., SI
Louis A Lancaster	1302 Thompson Ave SI,
Robin H Lancaster	1302 Thompson Ave S.I.
[illegible]	2720 Brooks
Joanne Wyckoff	2720 Brooks.
Kaylenn O'Byrne	1801 Atlantic
[illegible]	1801 Atl.
Helen Mayhew	2262 d'Ou Ave - PC
[illegible]	1115 Pol Ave "
John A. Jeffries	1615 Pol Ave Call them

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NAME	ADDRESS
Kelly Mosier	2730 Ion Ave.
Noah Simon	2730 Ion Ave
Steven Messier	2730 Ion Avenue
[illegible]	2730 Ion Ave.
Alice P. Botts	2724 Ion Ave.
[illegible]	2868 Atlantic Ave.
Carl D. Smith	1908 Thee St.

SEP. 22 MEMO

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NAME	ADDRESS
Joe Botts JOE BOTTS	2724 Jon Ave.
Elizabeth T. Hagood	1722 Atlantic Ave
Jonathan Andregg Jonathan Andregg	3 Florence Street.
Janis E. Way Janis E. Way	3 Florence St.
Jimmy HIERS	2714 Goldbug Ave.
Thomas E Tumlin	2673 Jon Ave
Tim Harrell	1741 MIDDLE ST
Beth Harrell	1741 MIDDLE ST
Sally	836 Middle St

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NAME	ADDRESS
M. Lynn Rutledge	2014 Central Ave. Sullivan's Island
James E Morrison VI	2808 Jasper Blvd
Peggy Marantis	2808 Jasper Blvd
Ferdinand Gregorie III	410 Patriot St. SI
Deborah G. Gregorie	410 Patriot St. SI

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NAME	ADDRESS
Martha Q. Smith	1908 Flag Street
Cheryl Alderton	2507 Atlanta Ave
[illegible]	2501 Atlanta Ave
Judith C. Reese	2209 Myrtle Ave

Skip Scarpa 2004956 - 2102 B Atlantic

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NAME	ADDRESS
Evelyn Morton Keeble	1419 Atlantic Ave, Sullivans Island, S.C

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NAME	ADDRESS
[illegible]	1902 Flagg St

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NAME	ADDRESS
Jane D Mickler	2118 Bettencourt St, S.I.
Robert Mickler	2118 Bettencourt St, S.I.
[illegible]	1817 Back St. SI
[illegible]	1817 Back St. SI
Jean M Kablick	1850 Ion Ave SI
[illegible]	1746 Thompson Ave SI
[illegible]	1850 Ion Ave SI
Brent Haven	1746 Thompson Ave

10

Andy Benke

From: Fred Wszolek [Fred@wwpstrategies.com]
Sent: Wednesday, March 07, 2012 11:24 AM
To: perkis mike
Cc: Andy Benke; Carl Smith
Subject: School lawsuit

Hi Mike, I just dropped off to Andy a letter agreeing to be the guy who gets sued over the school issue. I have a proposal for you:

How about we stop wasting our tax dollars on lawyers and you and I go before some retired judge who moonlights as an arbitrator, and we make our respective cases, then all agree to abide by his decision?

You come from the world of business, Mike, where they have embraced arbitration because it works faster at vastly lower cost. Why not do the same here? I think it's especially appropriate here because you're spending our tax dollars to sue us over over rights.

I hope you and your colleagues on Town Council will seriously consider this.

Take care,

Fred

FRED WSZOLEK :: O (843) 883 6294 :: M (843) 343 5743 :: F (800) 887 2043 :: AIM FWszolek

TOSI PRIVILEGE 0166

PLAINTIFF'S EXHIBIT 9

tabbies

Record on Appeal 318

FRED WSZOLEK 3014 ION AVENUE SULLIVANS ISLAND, SC 29482 (843) 343-5743 FRED@WWPSTRATEGIES.COM

Wednesday, March 7, 2012

Andy Benke
Town Administrator
Town of Sullivans Island
Hand Delivered

MAR 07 2012

Dear Mr. Benke:

My name is Fred Wszolek, and I live at 3014 Ion Avenue, Sullivans Island, SC 29482. I agree to accept service as named defendant in the lawsuit involving our right to a referendum vote regarding the new school. I accept service as an individual and as one involved in the petition effort. I don't purport to be the leader of the group or its spokesperson. But I am willing to participate in the process of securing a declaratory ruling from a judge in this matter as an individual named in a suit. That may require the refiling of the suit, as the currently filed suit names an organization.

I am not an attorney, nor do I plan to hire one. I will do the best I can to follow proper procedure. It is my hope that this process can move along as quickly as possible, with the bare minimum of legalese. I don't feel I should have to pay an attorney while my own tax dollars are paying for opposing counsel.

I believe if any issue is worthy of a vote of the people, it's this one. This is no mere zoning issue, and it is anything but an administrative matter. This issue involves an extremely valuable parcel of land owned by the people of Sullivans Island. And we believe our elected representatives in the Town, working with our elected representatives in the school district, are making the wrong decisions. What matter could be more appropriate for a vote of the people than what happens to our own land, when our own elected officials go the wrong way?

I am prepared to accept service today, or Thursday morning, but then will be out of town on business until Friday evening, and available again next week.

Best regards,

Fred Wszolek

Rcvd. by Andy Benke
03-07-12 1055 hrs

TOSI PRIVILEGE 0470

TOSI 004569

Andy Benke

From: martha smith [marthas1@bellsouth.net]
Sent: Monday, March 12, 2012 11:16 AM
To: Andy Benke
Cc: Carl Smith; Mike Perkis; Jerry Kaynard; Patrick O'Neil; Madeleine S. McGee; Hartley Cooper; Mary Jane Watson
Subject: DJ

Good morning, Andy,

I was just wondering if those of us who submitted their names for acceptance of service will be told by Council as far as what their intentions are at this time. Will we go forward with the lawsuit, and if so, who will they serve? Or will they try to save time and money and allow us our constitutional right to vote?

Thanks and I look forward to hearing from you,
Martha Smith

PLAINTIFF'S EXHIBIT
Kaylene H
9-19-13 JB

PLAINTIFF'S EXHIBIT
tabbies
10

TOSI PRIVILEGE 0116

TOSI 004391

Subject: RE: Acceptance of Service
From: Andy Benke
Date Friday, March 09, 2012 10:58 AM
To: 'martha smith' , 'Larry Dodds'
CC: 'Carl Smith' , 'Mike Perkis' , 'Jerry Kaynard' , 'Madeleine S. McGee' , 'Patrick O'Neil' , 'Hartley Cooper' , 'Mary Jane Watson'

Thanks Ms. Smith. I have received your message and will forward on the legal for review. However, during the discussion of the motion it was requested that individuals accepting service for the complaint do so through a signed letter vice electronic communication. Hence, I await your hand delivered correspondence.

Thanks,
Andy

Andy Benke
Town Administrator
Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482
Direct Telephone: 843-883-5726
Mobile Telephone: 843-568-8740
Facsimile: 843-883-3009
Emergency: 9-1-1
Police and Fire Dispatcher: 843-883-3931
Email address: abenke@sullivansisland-sc.com
Web address: www.sullivansisland-sc.com

Think Green - please don't print this e-mail unless needed.

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution, or coping of this information is strictly prohibited. If you have received this transmission in error, please notify the sender by calling (843) 883-5726.

From: martha smith [mailto:martha1@bellsouth.net]
Sent: Friday, March 09, 2012 10:34 AM
To: Andy Benke
Cc: Carl Smith; Mike Perkis; Jerry Kaynard; Madeleine S. McGee; Patrick O'Neil; Hartley Cooper; Mary Jane Watson
Subject: Acceptance of Service

March 9, 2012

Via email and Hand Delivered

TOSI PRIVILEGE 0466

Friday, March 09, 2012 America Online:

TOSI 004565

Andy Benke
Town Administrator
Town of Sullivans Island

Dear Mr. Benke:

My name is Martha Smith, and I live at 1908 Flag Street, Sullivans Island, SC 29482. I agree to accept service as a named defendant in the lawsuit involving our right to a referendum vote regarding the new school. I accept service as an individual and as one involved in the petition effort. I don't purport to be the leader of the group or its spokesperson. But I am willing to participate in the process of securing a declaratory ruling from a judge in this matter.

Regards,

Martha Smith

Andy Benke

From: will and kathy [grackler@aol.com]
Sent: Friday, March 09, 2012 2:43 PM
To: abenke@sullivansisland-sc.com
Subject: Re: Service for referendum

We will have it there today.

-----Original Message-----
From: Andy Benke <abenke@sullivansisland-sc.com>
To: 'will and kathy' <grackler@aol.com>
Cc: Larry Dodds <ldodds@doddsandhennessy.com>; 'Trenholm Walker' <gtw@p-tw.com>; 'Hartley Cooper' <Councilmembercooper@gmail.com>; 'Jerry Kaynard' <rackelspe@aol.com>; 'Madeleine McGee' <madelelnemcgee@me.com>; 'Mary Jane Watson (2)' <maryjane.watson99@yahoo.com>; 'Mary Jane Watson (1)' <mwatson@sullivansisland-sc.com>; 'Mayor Carl Smith' <cjenningssmith1908@yahoo.com>; 'Mike Perkis' <michaelperkis@yahoo.com>; 'Pat O'Neil' <onellp@sullivansisland-sc.com>
Sent: Fri, Mar 9, 2012 2:41 pm
Subject: RE: Service for referendum

Mr. and Mrs. Post,

Thank you for your email message regarding accepting service for the referendum complaint. I have forwarded this on to the legal department for review. However, please note that the motion by Council Monday evening 03-05-12 did require that a letter with original signature be submitted vice electronic correspondence. Town Hall is open until 6pm today.

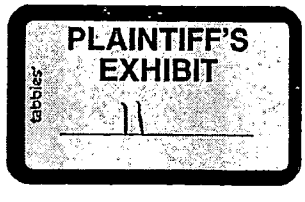
Regards,
Andy

Andy Benke
Town Administrator
Town of Sullivan's Island
Post Office Box 427
Sullivan's Island, SC 29482
Direct Telephone: 843-883-5726
Mobile Telephone: 843-568-8740
Facsimile: 843-883-3009
Emergency: 9-1-1
Police and Fire Dispatcher: 843-883-3931
Email address: abenke@sullivansisland-sc.com
Web address: www.sullivansisland-sc.com

Think Green - please don't print this e-mail unless needed.

CONFIDENTIALITY NOTICE: This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information which is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution, or coping of this information is strictly prohibited. If you have received this transmission in error, please notify the sender by calling (843) 883-5726.

From: will and kathy [mailto:grackler@aol.com]
Sent: Friday, March 09, 2012 2:04 PM
To: abenke@sullivansisland-sc.com; grackler@aol.com
Subject: Service for referendum



9 March 2012

Andy Benke
Town Administrator
Town of Sullivans Island

Dear Mr. Benke,

We, William Post and Kathleen W. Post, residents of 1907 I On Ave., Sullivan's Island, S.C. 29482, will accept service as individually-named defendants in the lawsuit involving our r ht to a referendum vote regarding a new elementary school on Sullivan's Island. We are willing to participate in the proc ss of securing a declaratory ruling from a judge in this matter.
We are neither leaders nor spokespersons of the group tha has submitted the petition asking for a referendum. We are not attorneys, nor do we plan to hire an attorney in regard t this issue.

William Post
1907 I' On Ave.
Sullivan's Island, S.C. 29482

Kathleen W. Post
1907 I' On Ave.
Sullivan's Island, S.C. 29482

TOSI PRIVILEGE 0121
TOSI 004394

9 March 2012

Andy Benke
Town Administrator
Town of Sullivans Island

Dear Mr. Benke,

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We are neither leaders nor spokespersons of the group that has submitted the petition asking for a referendum. We are
not attorneys, nor do we plan to hire an attorney in regard to this issue.

William Post
1907 I' On Ave.
Sullivan's Island, S.C. 29482

RECEIVED
MAR 0 9 2011
BY

Kathleen W. Post
1907 I' On Ave.
Sullivan's Island, S.C. 29482

TOSI PRIVILEGE 0456

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TOWN OF SULLIVAN'S ISLAND,)
Plaintiff,)
)
v.)
)
ISLANDERS FOR A)
SMALLER SCHOOL, and)
CHARLESTON COUNTY)
SCHOOL DISTRICT,)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-10-1060

FILED
2013 APR 23 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

The Plaintiff, by and through its undersigned attorneys, hereby voluntarily dismisses the Complaint and all causes of action therein without prejudice.

PRATT-THOMAS WALKER, P.A.

BY: G. Trenholm Walker

G. Trenholm Walker
W. Andrew Gowder, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
T: 843.727.2208
F: 843.727.2231
gtw@p-tw.com
wag@p-tw.com

ATTORNEYS FOR PLAINTIFF
TOWN OF SULLIVAN'S ISLAND

April 22, 2013

Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Rules of Civil Procedure by electronic transmission or by hand delivery or by regular United States Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s), on this 23rd day of April, 2013, Charleston, South Carolina.

DEFENDANT'S EXHIBIT
tabbies

PRATT-THOMAS | WALKER **ATTORNEYS AT LAW**

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

E-MAIL: njm@p-tw.com
DIRECT DIAL: 843.727.2222
DIRECT FAX: 843.727-2231

E. DOUGLAS PRATT-THOMAS
G. TRENHOLM WALKER
W. ANDREW GOWDER, JR.
JON L. AUSTEN
LINDSAY K. SMITH-YANCEY (SC, NC)
THOMAS H. HESSE (SC, GA)
IAN W. FREEMAN (SC, CA)
DANIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MONOC
JOHN P. LINTON, JR.

OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

April 22, 2013

U.S. MAIL [X] FACSIMILE [] FEDERAL EXPRESS [] EMAIL []

Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Town of Sullivan's Island v. IFASS & CCSD
C.A. No. 2012-CP-10-1060
Our File No.: 6670.009

Enclosed please find Voluntary Dismissal Without Prejudice. Thank you for filing this with the court.

With kind regards, I am,

Sincerely,

PRATT-THOMAS WALKER, P.A.

Nancy Jane Dennis
Legal Assistant

Enclosure (As Stated)
/njdm
c: John F. Emerson, Esq.
Mathew D. Hamrick, Esq.

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY HOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN McQUEENEY
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

RESOLUTION

A RESOLUTION BY THE TOWN OF SULLIVAN'S ISLAND PLEDGING SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT TOWARD OPERATION OF AN ELEMENTARY SCHOOL ON SULLIVAN'S ISLAND

WHEREAS, the Charleston County School District has operated the highly successful Sullivan's Island Elementary School on Sullivan's Island for over 50 years; and,

WHEREAS, the Town of Sullivan's Island has contributed to the operation of that school through a long term no cost lease of sixteen acres of ocean front property; and,

WHEREAS, the members of Council recognize that the strength of the Town is found in its residents and the sense of community that is enhanced by a local school; and,

WHEREAS, a core component of a residential community is its local elementary school that will create a safe and trusted environment in which children can learn, socialize and personally grow while contributing to the Town; and,

WHEREAS, the members of Council view the school as a valuable asset of the Town and desire that the elementary school remain on the Island;

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of Sullivan's Island pledges its support and commitment to the Charleston County School District in the effort to maintain the school on Sullivan's Island; and,



P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

BE IT FURTHER RESOLVED, that the Town Council of Sullivan's Island pledges its partnership with the Charleston County School District to continue the proud tradition of excellence at Sullivan's Island Elementary School.

Resolved this 19th Day of January, 2010.

TOWN OF SULLIVAN'S ISLAND

Carl J. Smith, Mayor

Attest:

Ellen McQueeney, Town Clerk

Andy Benke, Town Administrator

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL FERKIS, MAYOR PRO-TEM
JODY BOWLE
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN MILLER
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

RESOLUTION

A RESOLUTION BY THE TOWN OF SULLIVAN'S ISLAND REAFFIRMING SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT FOR THE CONSTRUCTION AND OPERATION OF AN ELEMENTARY SCHOOL ON SULLIVAN'S ISLAND

WHEREAS, BY RESOLUTION DATED JANUARY 19, 2010, THE TOWN OF SULLIVAN'S ISLAND PLEDGED ITS SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT IN THE EFFORT TO MAINTAIN THE SCHOOL ON SULLIVAN'S ISLAND; AND

WHEREAS, THE TOWN OF SULLIVAN'S ISLAND PLEDGED ITS PARTNERSHIP WITH THE CHARLESTON COUNTY SCHOOL DISTRICT TO CONTINUE THE PROUD TRADITION OF EXCELLENCE AT SULLIVAN'S ISLAND ELEMENTARY SCHOOL;

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN OF SULLIVAN'S ISLAND REAFFIRMS ITS SUPPORT FOR THE REBUILDING OF THE SCHOOL WITH NOT LESS THAN THE CURRENT ENROLLMENT AND, IF REQUIRED, WITH AN ENROLLMENT OF UP TO 500 STUDENTS TO BUILD THE SCHOOL IN A COST EFFECTIVE MANNER;

BE IT FURTHER RESOLVED THAT THE TOWN OF SULLIVAN'S ISLAND THANKS THE CHARLESTON COUNTY SCHOOL BOARD AND ITS EMPLOYEES FOR YOUR EFFORTS AND EXCEPTIONAL PROGRESS IN IMPROVING PUBLIC EDUCATION IN CHARLESTON COUNTY.

RESOLVED THIS 20TH DAY OF MAY, 2011.

TOWN OF SULLIVAN'S ISLAND

CARL J. SMITH, MAYOR

Attest:

Ellen Miller, Town Clerk

Andy Benke, Town Administrator

P.O. BOX 427 • SULLIVAN'S ISLAND, SC 29482
(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

DEFENDANT'S EXHIBIT 5

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
HARTLEY COOPER
JERRY KAYNARD
MADELEINE MCGEE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
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LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN MILLER
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

Oct. 10, 2011

I have received A Petition to Reconsider the construction of the Sullivan's Island Elementary School as currently proposed. (22 Sept. 2011).

14 pages of signatures)

Ellen L. Miller

KATHERINE A KENYON
NOTARY
My Comm. Exp.
04-16-2020
PUBLIC
SOUTH CAROLINA

Katherine A. Kenyon

EXHIBIT
tabbies
1

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(843) 883-3198 • FAX (843) 883-3009 • WWW.SULLIVANSISLAND-SC.COM

5

(46)

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

Pursuant to S.C. Code Ann. § 5-17-10, we, the undersigned, as registered voters on Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope, and type for our historic and environmentally sensitive, residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education, and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island elementary School, As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in, or about the present location of the SIES.

This goal of this petition is to gather the required number of signatures for the submittal of this ordinance to the Town Council. Pursuant to S.C. Code Ann. § 5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it final vote thereon.

AGREED UPON BY THE FOLLOWING PEOPLE, who have personally signed this petition, are registered voters of the state of South Carolina and Charleston County, and who have listed their registered voting address after their name.

Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petetioner.

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	DAVID SPURGIN	10/8/11	2668 JASPER BLVD.
Donna Malony	Donna Molony	10/4/11	2014 IDU AVE
Kelly Molony	KELLY MOLONY	10/7/11	2014 Iron Ave
Helen Sloan	Helen Sloan	10/8/11	1805 Middle St
	Andrew Selcer	10/8/11	1801 Middle St.
James Cooper	Jane s Cooper	10/8/11	1808 Middle St
	JOHN HUGHES COOPER	10-8-11	1808 MIDDLE ST.
Carol Antman	CAROL ANTMAN	10-8	1014 ATHENS
Michael Mathofer	Michael Mathofer	10-8	407 oneil st.
Michael Mathofer	MICHAEL MATHOFER	10/8/11	407 ONEIL ST SL.
Mary Guess	Mary Guess	10/9/11	2608 Middle St.
Mary Antman	MARY ANTMAN		1014 ATHENS
Helen Antman	HELEN V. ANTMAN	10/9/11	1422 MIDDLE ST SL
Peter Coish	Peter G. COISH	10/9/11	1808 Iron Avenue

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	KATHLEEN POST	10/2/11	1907 I'ON AVE.
	WILLIAM Post Jr	10/2/11	1907 I'ON Ave.
	F. JUSTINE POST	10/2/11	1907 I'ON AVE.
	CECELIA POST	10/2/11	1907 I'ON AVE.
	Robert B. Vann Sr.	10-7-11	1612 Atlantic Ave.
	FRANCES VANN	10-7-11	1612 Atlantic Ave.
	H. WAYNE HILLS	10-7-11	1418 THOMPSON AVE.
	WJ WOOD JR	10/7/11	1402 Thompson Ave
	EE WOOD	10/7/11	1402 Thompson Ave
	CAROLINE WOOD	10/7/11	1402 Thompson Ave
	ELLEN THURMAN	10/4/11	401 Thompson Ave,
	Lynn DeFyens	10/7/11	3009 Middle St.
	WILLIAM J. WOOD	10/7/11	1454 THOMPSON
	Edith Beckham	10/7/11	1434 Bee Ave. Sullivans
	Betty Harmon	10/7/11	1730 Middle St.
	Michael G. Bean	10/8/11	1738 Middle St.
	Robert P. Thompson	10/8/11	2917 Jon Sull. Is.
	Lisa Crow	10/8/11	2908 Jon Ave, Sull Is
	Virginia Runyon	10/8/11	2923 JON AVE Sull Is

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Susan D. Robertson	Susan D. Robertson	10-7-11	1901 Ion Ave. Sullivan's Island
Edward H Robertson III	EDWARD H. ROBERTSON III	10-7-11	1901 Ion Ave Sullivan's Island
Rosemary Thompson	Rosemary Thompson	10-9-11	2917 Ion Ave Sull A
Lynnie Harper	Lynnie Harper	10-9-11	1325 Middle ST.
Sarah Harper Diaz	Sarah Harper Diaz	10/9/11	1317 Middle St.
FRANK HARPER	FRANK HARPER	10/9/11	1325 MIDDLE ST
Daniel Harper	Daniel Harper	10/9/11	1325 Middle St.

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary: Katherine A Kenyon Commission Expires 04-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	E A Scarpa III	10/3/11	2102 Atlantic Ave
	Ann H. Graham	10/3/11	2102 B Ion Ave
J Marshall Stith	J. MARSHALL STITH	10/3/11	45 Station 22 Street
Jessamyn Jacobs	JESSAMYN JACOBS	10/3/11	415 Station 22 St
	E I CONDON	10/3/11	2201 ION AVE
Carolyn Scarpa	CAROLYN SCARPA	10/3/11	2102 Atlantic
Robert F Graham Sr	Robert F Graham Sr	10/3/11	2118 ION AVE
Anne L Graham	Anne L. Graham	10/3/11	2118 Ion Ave.
Nathaniel H Robb	Nathaniel H. Robb, JR	10/5/11	2209 Atlantic Ave
June Fischer	JUNE FISCHER	10-5-11	2216 Jones Blvd.
Leo Fehr	Leo Fehr	10/5/11	2668 Middle St
J.E. Pearce	J.E. PEARCE	10/5/11	2007 20TH St.
Martha Igoe	MARTHA IGOE	10/6/11	403 Sta 13 St
Roger Igoe	Roger Igoe	10/6/11	403 Sta 13 St
Mary Meehan	Mary Meehan	10/6/11	411 Sta 13 St
William G. Meehan	William G. Meehan	10/6/11	411 Sta. 13rd St.
Martha Funk	MARTHA FUNK	10/6/11	411 Sta. 13 St
~~Doris Lancaster~~	~~1302 Thompson Ave~~	~~10-5-11~~	
Doris Lancaster	DORIS LANCASTER	10-5-11	1302 Thompson Ave
Robert Lancaster	Robert LANCASTER	10-5-11	1302 Thompson Ave
Eugene S Blanchard	Eugene S Blanchard	10-5-11	1305 Thompson Ave.
June R Blanchard	June R Blanchard	10-5-11	1305 Thompson Ave
Nicholas Murphy	NICHOLAS MURPHY	10/5/11	1311 Ocean Front
Ann Gay	Ann H. Gay	10/5/11	848 Middle St.
Charles Gay	Charles Gay, Jr	10/5/11	"
Richard A Graham	RICHARD A GRAHAM	10/5/11	2102 ION AVE
M R Bailey	Mel R Bailey	10/7/11	829 Middle St
B N Bailey	B N Bailey	10/7/11	829 Middle St
	WALLACE Blum.	10/7/11	2068 ION
	HARTINE. C. HIERS	10/7/11	2714 Goldbug Ave SI
Mary R. B Blanchard	Mary R. BLANCHARD	10/7/11	2002 Central St
Thomas E Crisley	Thomas E Crisley Jr	10/7/11	2673 Ion Ave

Page 12

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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CHARLESTON COUNTY South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Ellen L. Miller Commission Expires 8-12-12

Notary Public Seal:

ELLEN L. MILLER COM. EXP. NOTARY PUBLIC 08-12-2012 SOUTH CAROLINA

John A. Perkins
PETIONER

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	JOHN A. JEFFRIES	10/5/11	1615 POE AVE
	JENNIFER JEFFRIES	10/5/11	1615 POE AVE
	~~[illegible]~~	~~10/5/11~~	
	P.R. EBEL	10/5/11	1620 POE. AVE
	ANN W. EBEL	10/6/11	1620 POE AVE
	Vicki H. Rudd	10/7/11	1617 Middle Street
	Howard F. Rudd, Jr.	10/7/11	1617 Middle Street
	DAVID BLOOM	10/9/11	1658 Atlantic Ave
	SONJA BLOOM	10/9/11	1658 Atlantic Ave
	~~Sandra~~ Lori Lyles	10/9/11	1651 Atlantic Ave.
	Delores A. Schweitzer	10/9/11	1612 Poe Avenue
	MARK J. BUTLER	10/9/11	1750 Fort Ave.
	Wiggle Butler	10/9/11	1750 Fort Ave
	MIKE MC INERNY	10-9	2301 MONROE AVE
	Dean Varner	10-9	2262 Myrtle Ave.
	Alexandra D. Varner	10-9	2262 Myrtle Ave

(21)

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

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Petitioner: Susan Poulnot

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	Lodene R Ad	10/5/20	210 Sta 28½
	Courtney Adams	10/5/2011	" "
	KEITH MAXEY	10/5/2011	210 Stat 28½
	Michal Baird	10/5/2011	308 St-9½
	Jim Brown	10/6/11	308 ST 9½
	Tambra Darby	10/6/11	933 Middle St
	JEREMIAH CUSHMAN	10/6/11	1655 MONROE ST
	Anne Parker	10/6/11	1702 ION Ave
	W. Scott Parker	10/6/11	1702 Ion
	Patrick K. Rutledge	10/6/11	1764 Atlantic
	Rochelle Rutledge	10/6/11	1764 Atl. Ave
	Richard K Spelman	10/5/11	2502 Middle St
	Francis C. Johnson	10/5/11	2402 Goldbug Ave
	Dicksie G Johnson	10/6/11	2402 Goldbug Ave
	Tammi Spelman	10/7/11	2502 Middle St
	Elizabeth Gregorie	10/7/11	2836 Harvey St
	Del Schutte	10/7/11	2926 Jasper
	Linda C. Schutte	10/7/11	2926 Jasper Blvd
	Sherry Coish	10/8/11	2808 Ion Ave
	RON COISH	10/9/11	2808 ION AVE.
	Angelyn S. Avinger	10/9/11	2857 Marshall Blvd

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Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

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SIGNATURE	PRINTED NAME	DATE	ADDRESS
Karen Coste	Karen Coste	9.30.11	322 Station 19, 51
Charlotte Collias	Charlotte Collias	9-30-11	1908 Ion Ave
	Hal Cesta	9/30/11	322 Sta. 19
Judy P. Nelson	JUDY P. NELSON	9/30/11	321 Sta 19
James E. Nelson	JAMES E. NELSON	9/30/11	321 STA. 19.
Clyde M. deBruce	Clyde M. deBruce	10/2/11	1903 Back St.
Sumter F. deBrux	Sumter F. deBrux	10/2/11	1903 Back St.
	James B. Nelson	10/2/11	321 Station 19
Bonnie A. Williams	Bonnie A. Williams	10/3/11	2513 Ion Avenue
Roy Williams	ROY WILLIAMS	10/3/11	2513 Ion Avenue
E.P. Chiola	E.P. CHIOLA	10/3/11	1616 Bde Ave
Eugene J West	Eugene J West	10/3/11	1714 Middle St
Linda C West	LINDA C WEST	10/03/11	1714 MIDDLE ST.
Milton Langley	MILTON LANGLEY	10/3/11	1618 Middle St.
Frannie Reese	Frannie Reese	10/3/11	305 Station 20
RayeAnn M. Osborne	RayeAnn M. Osborne	10/3/11	1801 ATLANTIC AVE.
Arleen Pearlman	Arleen Pearlman	10/3/11	3040 Middle St
Caroline S Osborne	Caroline S Osborne	10/3/11	1801 Atlantic Ave
Robert Cookson	ROBERT COOKSON	10-3	2513 I'On Ave.
Lynn Butledge	Lynn Butledge	10-3	2014 Central Ave
Carter Lupton	Carter Lupton	10-4-11	2829 Marshall Blvd
	Fred W Szolek	10/4/11	3014 ION Avenue
Carol Killough	Carol Killough	10/4/11	1813 Back Street
R.K. Killough	R.K. Killough	10/4/11	1813 Back St
Nancy Havens	Nancy Havens	10/4/11	1746 Thompson Ave
	Rita Lansing	10/4/11	1618 Middle St
Linda Nagle	Linda Nagle	10-5-11	2630 Middle St.
Ethel Fortenberry	ETHEL FORTENBERRY	10.5.11	2408 Myrtle Ave
Joanne Winchester	Joanne Winchester	10.5.11	2720 Brooks ST
John Winchester	John Winchester	10.5.11	2720 Brooks ST
Sherry Jo C Jones	Sherry Jo C Jones	10/5/11	2529 Atlantic Ave
Norwood L. Smoak	Norwood L. Smoak	10/5/11	2607 Bayonne
Josephine H. Hutcheson	Josephine H. Hutcheson	10.5.11	2663 Bayonne St.
Charles Kuntz	CHARLES KUNTZ	10/5/11	2820 Marshall Blvd
Sally Greer	SALLY GREER	10/5/11	2808 Atlantic
Thomas R Silver	Thomas R Silver	10/5/11	2830 Atlantic
Vivian C Scarborough	Vivian Scarborough	10.5.11	2830 Atlantic

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Amanda Jacob	Amanda Jacob	10/5/11	2814 Ion Ave.
Ann C. Fuller	Ann C. Fuller	10/5/11	2814 Atlantic Ave.
William F. Fuller	William F. Fuller	10/15/11	" "
Sheila Kuritz	Sheila Kuritz	10/5/11	2678 Jasper Blvd
Barbara Flaherty	BARBARA Flaherty	10/6/11	2208 Atlantic Ave.
Stephanie Aston-Jones	Stephanie Aston-Jones	10/6/11	2624 Ion Ave.
Michael C Ralston	MICHAEL C RALSTON	10/6/11	2629 Ion ave
Helen Roderick	Helen Roderick	10/6/11	2723 Bayonne St.
Kat Kenyon	Kat Kenyon	10/6/11	2804 Marshall
Joseph Wegwich	JOSEPH WEGWICH	10-6-11	3024 Marshall
Eloise Bradham	Eloise Bradham	10/6/11	3109 Ion Ave
Gary R. Visser	GARY R. VISSER	10/6/11	2824 Middle St
Dr. Elizabeth Bjorson	Dr. Elizabeth Bjorson	10/6/11	2624 Middle St
Margaret Marinski	MARGARET MARINARSKI	10/6/11	2808 JASPER
James E. Marianski	JAMES MARIANSKI	"	"
W. Howard Holl	W. HOWARD HOLL	10/7/11	1807 Ion AVE
Nancy C. Geckler	Nancy C. Geckler	10/7/11	1602 Atlantic Ave
Johnny Tate	JOHNNY TATE	10/07/11	1602 Atlantic Ave.
David T. Spell	DAVID T. SPELL, JR	10/7/11	1702 Atlantic Ave
John Roitzsch	John Roitzsch	10/7/11	1602 Poe
Pamella M Roitzsch	Pamella M Roitzsch	10/7/11	1602 Poe
Dup. Ellen Thurman	ELLEN Thurman	10/7/11	~~1401 Thompson~~ Ave.
Nancy A. Siegling Fortiere	NANCY A. SIEGLING FORTIERE	10/8/11	1761 Atlantic Ave
David L. Fortiere	DAVID L. FORTIERE	10/8/11	1761 ATLANTIC AVE
Carroll L. Joyner	Carroll L. Joyner	10/8/11	1113 Middle St
Katharine Crawford	Katharine Crawford	10/5/11	927 Middle St
	JANE SHEAHAN McLAUGHLIN	10/8/11	840 ↓
	RAY McLAUGHLIN	10-8-11	840 ↓
	Michelle Lally	10-8-11	840
Elizabeth Biddle	Elizabeth Biddle	10/8/11	1026 Oscola Ave.
Lydia Matthews	Lydia Matthews	10/8/11	405 Seabreeze Lane
Olga Kobrosky	Olga Kobrosky	10/8/11	402 Seabreeze Ln
V A Sonson	V A Sonson	10/8/11	401 Seabreeze Ln
De Daltorio	De Daltorio	10/8/11	401 Seabreeze Ln
Beth McLean	Beth McLean	10/8/11	1312 POE AVE
Ephraim Mikell Carroll	EPHRAIM MIKELL CARROLL	10/8/11	1308 Cove Avenue
Elizabeth Carroll	ELIZABETH CARROLL	10/8/11	1308 Cove Avenue

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Arthur Smith	ARthur Smith	10-8-11	2803 Marshall Blvd
Julia Smith	Julia Smith	10-8-11	2803 Marshall Blvd
Dan Legare	Dan Legare	10/8/11	3104 Marshall Blvd
Gloria Legare	Gloria Legare	10/8/11	3104 Marshall Blvd
Louis Juhasz	Louis Juhasz	10/8/11	301 Ivon Ave.
E. Stevebaugh	E. Baugh	10/08/11	2735 Jasper
Helen Spell	Helen Spell	10/10/11	1712 Atlantic Ave
Jane R Galis	Jane R Galis	10/10/11	1817 Back St.
	CONSTANTINE "CHUCK" GALIS	10/10/11	1817 BACK ST

SIGNATURE	PRINTED NAME	DATE	ADDRESS
[redacted]			
[redacted]	C RICHARDSON	10/10/11	2820 SARPER BLVD
[redacted]	P RICHARDSON	10/10/11	2820 JASPER BLVD

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Petitioner Stephanie Smith

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Stephanie Smith	Stephanie Smith	10/3/11	1908 Thee St.
Fleming Harris	Fleming Harris	10/3/11	2901 Ion Ave
Kathleen Harris	Kathleen Harris	10/3/11	2901 Ion Ave.
Lynne Hamontree	Lynne Hamontree	10/3/11	2811 Ion Ave
	Steven E Hamontree	10-3-11	2871 Ion Ave
Cynthia S Brown	Cynthia S Brown	10/3/11	2862 ION AVE
Summer Coish	Summer Coish	10/3/11	2808 Ion Ave.
Kelly Messier	Kelly Messier	10/3/11	2770 Ion Ave.
Joe Botts	Joe Botts	10/3/11	2724 Ion Ave
Lorin Botts	LORIN BOTTS	10/3/11	2724 Ion Ave.
Alice Botts	ALICE BOTTS	10/3/11	2724 Ion Ave
Ferdinand Gregorie	Ferdinand Gregorie III	10/3/11	410 Patriot St.
	Millie O'Shaughnessy	10/3/11	901 Middle St.
Susan Poulnot	Susan Poulnot	10/3/2011	2819 Marshall Blvd
David Poulnot	David Poulnot	10/3/2011	2819 Marshall Blvd
Martha B Gunter	Martha B Gunter	10/3/2011	2813 Marshall Blvd.
Barbara S Robinson	Barbara S Robinson	10/3/2011	2108 Pettigrew St
Leslie Robinson	LESLIE ROBINSON	10/3/11	2108 Pettigrew St
David DeAntonio	DAVID DEANTONIO	10/3/11	2850 JASPER BLVD
Deborah Gregorie	Deborah G Gregorie	10/3/11	410 Patriot St.
Gay Coleman	Gay Coleman	10/4/11	1856 Thee St.
Stewart Coleman	Stewart Coleman	10/4/11	1856 Thee St.
Judith C. Reese	Judith C. Reese	10/4/11	2209 Myrtle Ave.
Juanita T Byrum	JUANITA T. Byrum	10/4/11	2018 Middle St
Nancy J McConnell	NANCY J McCONNELL	10/4/11	3025 JASPER BLVD
Kay Park	KAY PARK	10/4/11	196 Ion Ave
Helen C Smith	Helen C Smith	10/4/11	2250 Atlantic Ave.
Teri B England	Teri B. England	10/4/11	2014 Middle St
	Patrick C Elderton	10/4/11	2507 Atlantic
Chery Melderton	Chery S. Elderton	10/4/11	2507 Atlantic
	Sarah Mari Elderton	10/4/11	2507 Atlantic
Eleanor P. Daly	Eleanor P. Daly	10/4/11	2408 Raven Drive
Michael F Daly	Michael F Daly	10/4/11	2408 Raven Drive
Gina Schirmer	Gina Schirmer	10/4/11	1857 Flag St.
Sam Schirmer	SAM Schirmer	10/4/11	1857 Flag St
Louise Rossell	Louise Rossell	10/4/11	2067 Middle St.
~~Lynn D Belgens~~	~~Lynn D Belgens~~	~~10/5/11~~	~~3009 Middle Street~~

Dup

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Dup ~~W. J. Wood Jr~~	~~W. J. Wood Jr~~	~~10/5/11~~	~~1220 Thompson~~
Dup ~~C E Woods~~	~~C E Woods~~	~~10/5/11~~	~~1220 Thompson~~
Dup ~~Catherine Wood~~	~~Catherine Wood~~	~~10/5/11~~	~~1220 Thompson~~
Agetha Thomas	Agetha Thomas	10/5/11	1220 Cove
Dup ~~William J Woods~~	~~William J Woods~~	~~10/5/11~~	~~1220 Thompson Ave~~
George A Dethyens	George A Dethyens	10/5/11	3009 Middle Street
Betty Dreneyer	Betty Dreneyer	10/5/11	2909 I'On Ave
Judy Boehm	Judy Boehm	10/5/11	3209 Middle St
Tera Hagood	Tera Hagood	10/5/11	2424 Raven Dr.
[illegible]	Timothy K Jenkins	10/6/11	2530 Jasper Blvd.
[illegible]	Carolyn G. McGlynn	10/6/11	2530 Jasper Blvd
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
Daniel Batten	F. DANIEL BATTEN III	10/6/11	2430 ATLANTIC
Susan G. Batten	SUSAN G BATTEN	10/6/11	2430 ATLANTIC
[illegible]	[illegible]	10/6/11	2864 BROWNELL
[illegible]	Elizabeth Haskin	10/6/11	2864 Brownell Ave
Joseph M. Dunn	Joseph M Dunn	10/7/11	1421 MIDDLE ST
Patricia Batten	PATRICIA PATTERSON	10/7/11	2830 middle St.
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
Judith K Veronen	Judith K Veronen	10/7/11	2507 Raven Dr.
John Holzworth	John Holzworth	10/7/11	2507 Raven
[illegible]	LENROOM BRANCH	10/7/11	2430 Jasper Blvd
Sandra Branch	Sandra Branch	10/7/11	2430 Jasper Blvd
Clyde Timmons	Clyde Timmons	10/7/11	1413 Middle St
Carlin M Timmons	Carlin Timmons	10/7/11	1413 Middle St
Jean Kablick	Jean Kablick	10/8/11	1850 I'on Ave.
[illegible]	GEORGE KABLICK	10/8/11	1850 I'on Ave
[illegible]	THOMAS SOMERS	10/8/11	2520 Myrtle Ave
Courtney Somers	Courtney Somers	10/8/11	2520 Myrtle Ave
[illegible]	MARK THAWES	10/8/11	2608 Atlantic Ave
[illegible]	Howard Gloria Howard	10/10/11	1820 Central Ave
Sandra R Tawes	SANDRA R TAWES	10/10/11	2608 ATLANTIC AVE
George W. Tawes	GEORGE W. TAWES	10/10/11	2608 ATLANTIC AVE
[illegible]	Harold C. ENLOE	10/10/11	2220 I'on

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KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Martha J. Smith

Petitioner

Page

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	ELLISON SMITH IV	10/8/11	1908 Flag St.
Martha J. Smith	MARTHA J. SMITH	10/8/11	1908 Flag St.
Marilyn Goldstein	MARILYN GOLDSTEIN	10/8/11	194 STATION 19
	HERB GOLDSTEIN	10/8/11	194 STATION 19
	ROBERT FAVA	10/8/11	ZUZU MYRTLE
Barbara P. Spell	Barbara P. Spell	10/8/11	1702 Atlantic Ave
	Jennifer Angelino	10-9-11	2851 Middle St
	MARK ANGELINO	10-9-11	2851 MIDDLE ST.
	Robert B. Pearlman	10-9-11	3010 Middle St.
Cynthia Pearlman	Cynthia Pearlman	10-9-11	3010 Middle St
Martha DeLuca	Martha DeLuca	10-9-11	2856 Middle St.
	Christine Richard	10/9/11	2820 Jasper
Diane R. Cartledge	Diane R. Cartledge	10/9/11	2696 Jasper
	JEANNE SMITH	10/9/11	1719 ATLANTIC
J. Addison Ingle	J. Addison Ingle	10/9/11	1719 Atlantic Ave

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Caroline Messier	Caroline Messier	10/4.11	2730 Ion Ave.
	Jeffrey Simon	10.4.11	2730 Ion Ave
	ADAM SIMON	10.4.11	2730 Ion Ave
	Steven Messier	10/9/11	2730 Ion Ave

ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

TOWN OF SULLIVAN'S ISLAND
COUNTY OF CHARLESTON, SOUTH CAROLINA

ORDINANCE NO._____

Adopted, _____ Day of _____ 2011
Effective, _____ Day of _____ 2011

SECTION 1-1: SHORT TITLE

This ordinance shall be known as: ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

SECTION 1-2: PURPOSE

1) TO PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO HEAR, EVALUATE, CONSIDER, AND COMMENT UPON THE CURRENTLY PROPOSED CONSTRUCTION PLAN OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL;
2) TO MANDATE THE COLLECTION OF PUBLIC COMMENTS IN AN OPEN FORUM;
3) TO FOSTER COMPLIANCE WITH STATE AND FEDERAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
4) TO FOSTER COMPLIANCE WITH LOCAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
5) AND FOR OTHER PURPOSES, AS ALLOWED BY LAW.

SECTION 1-3: ENACTING CLAUSES

WHEREAS, S.C. Code Ann. § 5-17-10 and § 5-17-30 (1976 & Supp. 1998) provides procedures for concerned citizens to introduce local ordinances, and request a referendum on said ordinances, in matters such as the construction of a public elementary school;

WHEREAS, it has been determined that any proposed school on Sullivan's Island should comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island (Article XII, Design Review Board, Section 21-111);

WHEREAS, the impact of the proposed school building project has not been fully evaluated, including, but not limited, to specific concerns regarding, water, sewage, traffic/parking, environmental and storm-water drainage issues;



WHEREAS, the registered voters of Sullivan's Island have not been fully informed of the results of previous evaluations;

WHEREAS, Sullivan's Island residents desire full due process and crave an opportunity for input at a public hearing, and said residents further desire to be heard in full transparency on this issue regarding public monies and public education;

WHEREAS, the magnitude of the currently proposed project poses numerous, potential, impacts to the historic and environmentally sensitive residential community of Sullivan's Island;

WHEREAS, the sponsors of this ordinance emphatically support the rebuilding of a public school at SIES, they also hold that this new school must be one of a more appropriate size, scope, and type for a historic and environmentally sensitive residential community;

WHEREAS, the afore-said project impacts are regulated by a myriad set of local, state, and federal laws which must be addressed in the public interest;

WHEREAS, all local ordinances on Sullivan's Island are deliberated and approved by the Town Council in a multi-step process with a first reading, a second reading, a third reading, and a final ratification at a regular Town Council Meeting;

WHEREAS, the duly elected governing authority of Sullivan's Island is the Sullivan's Island Town Council and the Mayor thereof;

WHEREAS, the Sullivan's Island Town Council provides approval for the construction of the Sullivan's Island Elementary School by virtue of being the duly elected governing authority;

NOW THEREORE, be it ordained that the Sullivan's Island Town Council adopts the following ordinance, with the following provisions:

Section 1-4: GENERAL PROVISIONS

Section 1-4(1) (a-i). Definitions.

For purposes of this Ordinance, the following definitions apply:

(a) 'School' means Sullivan's Island Elementary School, or SIES;
(b) 'County' means the County of Charleston;
(c) 'Council' means Sullivan's Island Town Council;
(d) 'Person' means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association;
(e) 'Town' and 'Island' means Sullivan's Island;
(f) 'State' means the state of South Carolina;
(g) 'Federal' means United States;

(h) 'Public interest' refers to the beneficial and adverse impacts and effects of a project upon members of the general public;
(i) 'The public,' 'citizens,' or 'residents' refers to registered voters/residents of Charleston County.

Section 1-4 (a-f). Findings.

(a) This ordinance shall be liberally construed and applied to promote its underlying purposes and policies.
(b) If any provision of this ordinance, or the application thereof, is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.
(c) The intent of this ordinance is to enable the Town of Sullivan's Island, acting individually or in concert, to continue to preserve and enhance its present advantages, and to prevent or minimize such future problems as may be foreseen, specifically in regard to the construction of the SIES, as currently proposed.
(d) As the local government, the Town has a long history of adopting and enforcing appropriate land use controls, and cooperating with other governmental authorities.
(e) The provisions of this ordinance are declared to be necessary for the promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare of the residents of Sullivan's Island.
(f) The preamble to this ordinance is hereby incorporated into this ordinance as if set out fully herein.

Section 1-5 (a-b): PROVISIONS

(a) Any school built or rebuilt on Sullivan's Island must comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island and must specifically be approved by the board or committee that has responsibility for approving design guidelines. (Article XII, Design Review Board, Section 21-111);
(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island before the board or committee has approved the design of the school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

ALTERNATIVE

Section 1-5 (a-b): PROVISIONS

(a) The Town of Sullivan's Island shall not enter into any agreement or make any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school.

(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

Section 1-6: ORDINANCE ADOPTION

The Ordinance Book of Sullivan's Island in the County of Charleston is hereby amended by adopting on the ____ day of _____, 2011 this Ordinance, to be numbered _____.

This Ordinance shall be known as the ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

The effective date of this ordinance is the _____ day of _____, 2011.

SO ORDAINED by the Town Council of Sullivan's Island, this day.

ATTEST:

By _____
Clerk to the Town Council

Mayor _____

Sullivan's Island, Charleston County

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MICHAEL PERKIS
MAYOR

TOWN COUNCIL
JERRY KAYNARD, MAYOR PRO TEM
CHAUNCEY CLARK
HARTLEY COOPER
SUSAN MIDDAUGH
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
COMPTROLLER

LAWRENCE A. DODDS
TOWN ATTORNEY

GREG GRESS
WATER AND SEWER MANAGER

JOE HENDERSON
ZONING ADMINISTRATOR

DANIEL S. HOWARD
CHIEF OF POLICE

ELLEN MILLER
TOWN CLERK

RANDY ROBINSON
BUILDING OFFICIAL

M. ANTHONY STITH
FIRE CHIEF

May 9, 2014

The attached copy of Town of Sullivan's Island Ordinance No. 2011-05 is a certified copy of the original ordinance on file.

Ellen Miller
Town Clerk

Mary E. Poole
Notary for the State of South Carolina
Charleston County
My Commission expires: July 24, 2018

MARY E. POOLE
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
JULY 24, 2018

EXHIBIT
tabbies
4

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Town of Sullivan's Island, South Carolina
Ordinance No. 2011-05

An Ordinance to Amend the Ordinances of the Town of Sullivan's Island, South Carolina, Chapter 14, By Adding a New Section 34 to read as follows:

Section 14-34 The Lease of Certain Real Property to the Charleston County School District

WHEREAS, the Town of Sullivan's Island is the owner of certain real property as described in the Lease Agreement attached (Exhibit 1) and reflected in Exhibit "A" of said Lease; and

WHEREAS, the Charleston County School District is presently leasing the above described property and desires to control the property for a longer term and terminate its existing lease; and

WHEREAS, the Town of Sullivan's Island desires to lease said property to the Charleston County School District and finds that the lease of the property in accordance with the terms and conditions of the Lease Agreement is in the best interest of the Town and its citizens;

NOW THEREFORE, BE IT ORDAINED by the Town Council of Sullivan's Island in meeting duly assembled, that the Town of Sullivan's Island lease to the Charleston County School District all that real property described in said Lease Agreement, pursuant to the terms and conditions of the Lease Agreement; and

BE IT FURTHER ORDAINED that the Mayor or Mayor Pro-Tem of the Town of Sullivan's Island is hereby directed and authorized to execute the said Lease Agreement and other necessary documents to complete the transaction.

This Ordinance shall take effect immediately upon its ratification.

Michael Perkis, Mayor Pro Tempore

ATTEST:

Ellen Miller, Town Clerk

First Reading: August 16, 2011
Second Reading: September 12, 2011
Third Reading: September 20, 2011
Ratification: October 18, 2011

Charleston County SCHOOL DISTRICT

TO: Board of Trustees

FROM: Michael Bobby, Chief Financial and Operations Officer

DATE: August 15, 2011

SUBJECT: Sullivan's Island Elementary School – Town of Sullivan's Island LEASE

RECOMMENDATION: Approve lease as presented.

The material is submitted for: ☒ Action ☐ Information

☐ Open ☒ Executive

Respectfully submitted:

Nancy J. McGinley, Ed.D
Superintendent of Schools

8/10/11
Michael L. Bobby
Chief Financial and Operations Officer

N/A
J. Douglas Gepford, Ph.D.
Chief Academic Officer

N/A
William Lewis
Chief Operating Officer, Capital Programs

N/A
Cindy Bohn Coats
Chair, Audit & Finance Committee

☐ Item voted on and recommended for Board approval by the A&F Committee on _____

N/A
Elizabeth Moffly
Chair, Policy Committee

☐ Item voted on and recommended for Board approval by the Policy Committee on _____

Capital Projects

August 15, 2011

TOPIC:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

BACKGROUND:

On March 27, 2006 by Item 9.4 the Board approved the construction and budget for the New Sullivan's Island Elementary School. As part of the 2005-2009 Capital Building Program, CCSD Board of Trustees approved the advance design for a new Sullivan's Island Elementary School to design development phase. The Board of Trustees approval to replace the existing school versus renovations and additions to the existing facility came after schematic design of the renovation and addition project as well as the finalization of the seismic analysis. The estimate of that scope of work deemed the project un-executable because the value of the improvements exceeded 50% of the appraised value of the facility, thereby, requiring that all buildings must be upgraded to current building codes and FEMA requirements.

Because the original scope of work was deemed un-executable, CCSD Board of Trustees approved the construction of a new facility on the existing site utilizing reserves and construction savings from the 2005-2009 Capital Building Program. Prior to the Board of Trustees approving the replacement of the existing facility, it was requested by CCSD to the Town of Sullivan's Island that a "Memorandum of Understanding/Resolution" be given to CCSD stating they were in total agreement to extend the lease to allow CCSD to construct the new facility on the existing site (see attached Resolution of the Town of Sullivan's Island dated January 19, 2010).

Over the past several months Staff, Architect (Cummings & McCrady) and the Program Manager, (Cumming/SMG) have been working with the Town of Sullivan's Island to resolve, in advance, any potential issues the Town of Sullivan's Island could impose that would affect the design or construction of the new facility. Concurrently, CCSD Staff, CCSD's Real Estate Attorney (Clawson & Staubes), and C/SMG have been working with Town of Sullivan's Island Town Administrator to finalize the New Lease for the property.

On July 9, 2011, CCSD Staff, Architect, and Program Manager presented to Council, in Executive Session, CCSD's concerns with the draft proposed lease as submitted by The Town of Sullivan's Island.

The Town of Sullivan's Island noted CCSD's concerns and on August 3, 2011; CCSD received a revised draft lease addressing most all of CCSD's concerns noting only minor changes.

CCSD's Staff, Legal Counsel (Clawson & Staubes), Architect, and Program Manager have been successful in negotiating the final lease addressing both CCSD and The Town of Sullivan's Island concerns.

DISCUSSION:

The lease needs to be approved so the Architect can move forward with design and approvals. Also, CCSD needs to approve the lease in advance of The Town of Sullivan's Island formally approving at their August 16, 2011 Council Meeting.

RECOMMENDATION:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

FUNDING SOURCE/COST:

No additional funds are required.

FUTURE FISCAL IMPACT:

None

DATA SOURCES:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

PREPARED BY:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

REVIEWED BY LEGAL SERVICES

Matthew Moore, Clawson & Staubes

REVIEWED BY PROCUREMENT SERVICES

Lawrence Lutrario

ATTACHMENTS

1. Resolution of The Town of Sullivan's Island dated January 19, 2010
2. Lease

CARL J. SMITH
MAYOR

TOWN COUNCIL
MICHAEL PERKIS, MAYOR PRO-TEM
BUDDY BOWLES
JERRY HAYNARD
MADELEINE MCBRIDE
PATRICK O'NEIL
MARY JANE WATSON

TOWN OF SULLIVAN'S ISLAND

ANDY BENKE
TOWN ADMINISTRATOR

JASON BLANTON
CHIEF OF POLICE

LAWRENCE A. BODDS
TOWN ATTORNEY

GREG GRESS
BUILDING OFFICIAL

DANIEL R. HOWARD
CHIEF OF POLICE

EILEEN McQUEENEY
TOWN CLERK

ANDY ROBINSON
RECREATION DIRECTOR

M. ANTHONY STITH
FIRE CHIEF

RESOLUTION

A RESOLUTION BY THE TOWN OF SULLIVAN'S ISLAND PLEDGING SUPPORT AND COMMITMENT TO THE CHARLESTON COUNTY SCHOOL DISTRICT TOWARD OPERATION OF AN ELEMENTARY SCHOOL ON SULLIVAN'S ISLAND

WHEREAS, the Charleston County School District has operated the highly successful Sullivan's Island Elementary School on Sullivan's Island for over 50 years; and,

WHEREAS, the Town of Sullivan's Island has contributed to the operation of that school through a long term no cost lease of sixteen acres of ocean front property; and,

WHEREAS, the members of Council recognize that the strength of the Town is found in its residents and the sense of community that is enhanced by a local school; and,

WHEREAS, a core component of a residential community is its local elementary school that will create a safe and trusted environment in which children can learn, socialize and personally grow while contributing to the Town; and,

WHEREAS, the members of Council view the school as a valuable asset of the Town and desire that the elementary school remain on the Island;

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of Sullivan's Island pledges its support and commitment to the Charleston County School District in the effort to maintain the school on Sullivan's Island; and.

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(843) 883-3198 • FAX (843) 883-3069 • WWW.SULLIVANSISLAND-SC.COM

BE IT FURTHER RESOLVED, that the Town Council of Sullivan's Island pledges its partnership with the Charleston County School District to continue the proud tradition of excellence at Sullivan's Island Elementary School.

Resolved this 19th Day of January, 2010.

TOWN OF SULLIVAN'S ISLAND

Carl J. Smith, Mayor

Attest:

Ellen McQueeney, Town Clerk

Andy Benke, Town Administrator

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LEASE AGREEMENT

This Lease Agreement is made and entered into as of this _____ day of _____, 2011 by and between the Town of Sullivan's Island (hereinafter referred to as "Landlord") and the Charleston County School District (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of the below-described property and firmly believes it is in the best interests of the Town of Sullivan's Island to have the Elementary School located and operating thereon, and desires to cooperate with the Tenant in having a new school built on the below-described property; and

WHEREAS, the use of said premises for a public elementary school is a material obligation of the Tenant under this lease agreement. The Tenant shall complete the design and construction of the school as soon as possible, using its best efforts, due diligence and any and all means available to expedite the completion of said facility. The Landlord and Tenant agree to expedite their obligations hereunder to complete the school for use and occupation by January 2014; and

WHEREAS, Tenant presently is leasing the below-described property pursuant to an Agreement entered into with the State of South Carolina and School District Number 2 of Charleston County, which expires in approximately forty (40) years; and

WHEREAS, Tenant desires to control the property for a longer term and desires to terminate it's existing lease and enter into this lease for a term of seventy-five (75) years; and

NOW, THEREFORE, in consideration of the terms and conditions of the within lease and the mutual promises and covenants herein contained and further in consideration of the sum

of Ten and No/100 ($10.00) Dollars, and other value consideration paid by Tenant, receipt whereof, which is acknowledged, Landlord does hereby lease and let to lease, and Tenant hereby takes and hires from Landlord upon and subject to the terms, conditions and provisions of this lease, the premises hereinafter described, together with all of the improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, for the term and upon the conditions of this lease as hereinafter provided.

1. PROPERTY LEASED. All that real property located within the Town of Sullivan's Island encompassing approximately 5.61 acres, butting and bounding on the North by the seaward boundary of Battery Gadsden and Battery Thompson. The South line, or seaward line, would be generally an east-west line along the remnants of the Old Rock Jetty. The West line would be located approximately seventy (70') feet east of the existing leased property line, and the East line shall be approximately seventy (70') feet west of the existing east leased property line. The legal description is shown more fully and described on Exhibit "A," being the area between points designated as "A", "B", "C" and "D", which is attached hereto and incorporated herein by reference (the Leased Property). Landlord will provide non-exclusive easements of access and egress by any and all pedestrian and vehicular means, including construction vehicles and equipment of all types, from I'on Avenue and Atlantic Avenues to the Leased Property for the term of this lease. For the term of this lease, Landlord will also provide non-exclusive easements of pedestrian access and egress to, from and between the Leased Property and the beach over the existing beach path as is reflected on Exhibit "A" to this lease.

2. TERM. The term of this Lease shall be for a period of seventy-five (75) years commencing on the 1ST day of July, 2011 and ending on the 30th day of June, 2086.

3. RENT. Tenant agrees to pay rent hereunder to Landlord payable in advance upon the signing of this Lease in the amount of Ten and No/100 ($10.00) Dollars.

4. USE OF THE LEASED PROPERTY. The Leased Property and all of the improvements located thereon, or to be located, shall be used by the Tenant only as an Elementary School children of the Town, and the surrounding areas within the Charleston County School District, and for such other related purposes necessary for the operation of the Elementary School and the education of the children.

5. REVERSION. The lease premises shall revert to the possession and control of the Landlord at the end of the lease term, or upon the breach of any provision herein or any default by the Tenant. No notice shall be required for such reversion to occur; provided, however, Landlord may permit the Tenant an opportunity to cure any such default within a period of no longer than thirty (30) days from the occurrence of said breach or default.

Once the elementary school is completed and available for use as a public elementary school, any abandonment of that continuous use and purpose by the Tenant shall be a default and breach of this lease agreement. In such circumstances, the premises shall revert to the Landlord and the lease terminates.

Failure of the Tenant to maintain continuous use of the new school as a public elementary school for a period of twenty-four (24) months shall constitute abandonment of the lease and the premises. In the event that such abandonment occurs, then, in that event, the Landlord may terminate the lease, enter the premises, take control of the premises and use the premises for its purposes or lease said premises without encumbrance from the terminated lease herein. Any personal property remaining in the Leased Property at the expiration of the lease period shall be

deemed abandoned by the Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefore.

6. CONDITION AND MAINTENANCE OF THE LEASED PROPERTY. The Tenant accepts the property in its present condition. Landlord makes no representations or warranties, either expressed or implied, regarding the condition of the Leased Property, or its fitness for any purpose. Tenant agrees to at all times during the term of this Lease, be responsible, for the construction of all improvements and for any and all repairs, maintenance and replacements, ordinary and extraordinary, along with all infrastructure necessary to provide any and all utilities to the property. All such improvements shall be built in accordance with the laws, ordinances and building codes of the Town of Sullivan's Island, the County of Charleston, and the State of South Carolina.

7. TAXES AND INSURANCE. Tenant agrees to be responsible for all taxes, if any, and all insurance required on the premises.

8. UTILITIES. Tenant agrees to be responsible for providing and bringing all utilities to the property, and for paying all utilities on the Leased Property.

9. ASSIGNMENT OR SUBLEASE. Tenant shall not have the right to assign or sublet the Leased Property to any other entity. Tenant shall not assign, transfer, mortgage or pledge or otherwise encumber or dispose of this Lease, or sublet the premises, or any part thereof, without written approval of the Landlord. If this Lease is sublet, assigned, mortgaged, pledged, or otherwise encumbered or disposed of, or occupied without the Landlord's written permission, this Lease may, at the option of the Landlord, be terminated by a seven (7) day written notice to the Tenant.

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10. IMPROVEMENTS AND ALTERATIONS. Any new structures to be placed on the Leased Property, or any improvements to the Leased Property should not be made without the prior written consent of Landlord. Tenant hereby agrees to build the anticipated new school, taking into consideration the compatibility of the existing buildings located nearby and within the Town, with intentions to achieve neighborhood compatibility. In achieving neighborhood compatibility, the Tenant shall consider the standards of neighborhood compatibility as set out in Section 21-111 of the Town of Sullivan's Island Ordinances.

Tenant agrees to design the new school with input from the Town Council, or their duly appointed agents with the understanding and agreement that no construction shall begin until such plans have been approved by the Town Council. The Landlord and Tenant agree to create procedures for the Town and/or its agents or boards, to review the design in phases, and to review the construction pursuant to the design and specifications.

11. DESIGN APPROVAL PROCESS. Tenant shall submit to the Landlord all plans and designs for the new school to be located on the Leased Property. The approval process shall include the following approval steps:

Conceptual Design Parameters.

The parties agree that the conceptual design parameters for the new school building shall include a maximum of 74,000 square feet of conditioned space as defined by the International Building Code, with a maximum of 34 feet for Building A, with maximum of 48 feet height for two-story building (Building B), if required and justified to Council, with a maximum of 42 feet for multi-purpose building (Building C), and with maximum of 35 feet height for Building D.

12. CONCEPTUAL DESIGN. Submissions by the Tenant shall include height, square footage, footprint, side setbacks, seaward and inland setbacks, elevations, location of exterior

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HVAC and mechanical units, dumpster locations, other significant architectural exterior elements (including decks, porches, protrusions, roof lines), building coverage ratio of 27% percent of the Leased Property (based on first floor heated square footage of 65,600 square feet excluding decks, stairs, ramps, roof overhangs and sun shades), massing, and exterior façade relief designs.

The projected timetables for these submissions to the Landlord for approval are as follows:

1. **Conceptual Design** **September 2011**
   Schematic Design **September 2011**

   Elements:

   Traffic flow and parking
   Site orientation
   Building Height
   Massing
   Floor plans with elevations
   Roof lines
   HVAC/mechanical placements
   Entrance Design

2. **Design Development** **February 2012**
   Exterior/Con Docs **February 2012**
   Final Approval **February 2012**

   Elements:

   Approval of Exterior Materials and Colors
   Approval of Roof Material and Color
   Approval of Sidewalks and Ramps
   Approval of Preliminary Landscaping
   Approval of Playground Areas
   Approval of Joint Use Spaces
   Review of Typical Classroom Layout
   Approval of Storm Water Drainage Plan

Community Meetings

1. **Sullivan's Island Community Meeting #1 - September 2011**
2. **Sullivan's Island Community Meeting #2 - January 2012**
3. **Sullivan's Island Community Meeting #3 - May 2012**

13. BUILDING INSPECTION. All building inspections, including the approval of the plans and specifications, shall be the sole responsibility and obligation of the Tenant and of the State of South Carolina, Department of Education, who shall approve all plans and inspect all construction in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide. It shall be the sole obligation and responsibility of State Superintendent of Education to approve construction and issue a certificate of occupancy at the completion of construction, prior to the occupation and use of the school building. The Town of Sullivan's Island may, but shall have no obligation to, require further inspections prior to occupancy, all at the expense of the Tenant. Notwithstanding any provisions here, the Town of Sullivan's Island shall not be responsible for the design, construction, maintenance or inspection of the new school and the Town of Sullivan's Island shall not be responsible for any future design, construction, maintenance or inspection of the new school.

14. DEMOLITION. The Tenant shall be required to apply for a demolition permit from the Town of Sullivan's Island prior to demolition of the existing structure on the Leased Property in accordance with the requirements of the Town of Sullivan's Island.

15. FUTURE CONSTRUCTION, RENOVATIONS, MAJOR ALTERATIONS. All future construction, renovations and major alterations shall be subject to the same procedures contained herein for the design and construction of the new school, subject to final approval by the Town of Sullivan's Island and any zoning provisions now existing or to be adopted by the Town.

16. HISTORIC STRUCTURES AND SITES. The Zoning Ordinance of the Town of Sullivan's Island provides for the creation of an Historic Preservation Overlay District, designed

to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town. The Town has determined that the historic, architectural, cultural and aesthetic features of the Town represent valuable resources. Tenant agrees to conduct a survey of adjacent historic properties to the Leased Property and to promote, preserve, protect and enhance those structures and sites in accordance with the Zoning Ordinance of the Town and in compliance with all federal, state and local laws.

17. PROTECTION AND RESPONSIBILITY FOR NEIGHBORING PROPERTIES. During construction of the new school and thereafter, the Tenant shall at all times be responsible for any and all damages incurred by neighboring and adjacent properties, specifically including historic properties and sites. The Tenant, its contractors, agents and employees shall take precautions to avoid any damage to the neighboring and adjacent properties, and historic properties and sites. The Tenant shall be obligated to report to the Landlord any and all damages resulting from the construction and operation of the new school.

18. JOINT USE FACILITIES.

The parties agree to explore joint use of the school facilities and joint use of Town property including green areas for parking, public library improvements, auditorium and meeting room uses, landscaping adjacent areas and entrances, summer campus uses,
gardening projects, recreational use agreements, joint use and improvements to tennis courts with Tenant financial contribution, Battery Gadsden, joint recycling programs and improvements to access and egress routes with Tenant financial contributions.

19. ENVIRONMENTAL COMPLIANCE BY TENANT. Tenant agrees, that under all circumstances, Tenant shall comply with all federal, state and local laws, ordinances, rules and regulations which are applicable, as to the conduct of Tenant's business as it relates to the

environment, including but not limited to, spillage, pollution and storage. Tenant shall not use, store or generate hazardous substances, as that term is otherwise defined in this Lease, at the Leased Property. Tenant will indemnify and hold harmless Landlord, its partners, its employees and agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, cost or expense of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors and invitees with respect to (i) the generation, manufacture, or operations involving transport, treatment, storage, handling, production, processing, disposal, release of any hazardous materials which are on, from or affecting the premises, including without limitation, the soil, water, vegetation, building and improvements on the premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (iv) any violations of laws, orders, regulations, requirements or demands of governmental authorities which are based upon or related to such hazardous materials including, without limitation, attorneys and consultants fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

20. LIENS. Tenant shall not create any liens for labor or materials against Landlord's or Tenant's interest in the premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only to secure the payment of any bill for work done or material furnished during the rental period of this lease. In

the event that liens are placed on record against the premises by contractors, mechanics, laborers, material suppliers or others because of any action by Tenant, such placement of liens shall constitute a default of this lease by Tenant, unless said lien(s) are bonded by Tenant and removed from said premises within fourteen (14) days. Tenant shall require a written waiver of liens from all laborers, material suppliers, contractors, mechanics or others releasing any claim to Landlord's interest in said premises.

21. DAMAGE OR DESTRUCTION. In the event any of the structures located, or to be located, on the Leased Property are damaged and require replacement, the requirements of this Lease shall apply to any new structures or improvements being made to the property in the future.

22. INFRASTRUCTURE/IMPACT FEE. The Tenant acknowledges and agrees that any additional costs incurred during construction by the Town shall be paid by the Tenant to the Landlord upon the Landlord forwarding any invoices to the Tenant. In lieu of paying the Landlord for the impact on the infrastructure, Tenant will pay to Landlord $175,000.00 for an Impact Fee. A tree mitigation plan will be submitted to and subject to approval by Town Council of the Town of Sullivan's Island.

23. TRAFFIC FLOW. The Tenant acknowledges and agrees that car traffic entering the School will enter and exit from I'On Avenue, and buses will enter and exit through Atlantic Avenue. After initial approval by Landlord, any changes to the traffic pattern by the Tenant must be approved in writing by the Landlord. It is understood and acknowledged by the Tenant that access and egress routes to the new school are not part of the Leased Property. The Town of Sullivan's Island shall have the sole discretion to adjust the egress and access to the new school, as it shall determine necessary from time to time, after consultation with the Tenant based on

public safety considerations. The Tenant shall maintain all roads primarily used for access and egress to school campus including Leased Property and easements.

24. TERMINATION OF EXISTING LEASE. Upon the execution of this Lease, the Landlord and the Tenant agree to execute a Termination of Lease, terminating that certain Lease entered in and by and between the State of South Carolina and School District Number 2 Charleston County the 23rd day of April, 1954.

25. INSURANCE TO BE PROVIDED BY TENANT

(a.) Coverage and Amount During the Term, Tenant shall maintain policies of insurance at its sole cost and expense as follows:

(i) Commercial General Liability Insurance, including property damage, insuring Tenant and with Landlord as an additional insured (and any Mortgagee or other person or persons whom Landlord may reasonably designate, called "Additional Insured" in this Lease) from and against claims, demands, actions, or liability for injury to, or death of any persons and for damage to property arising from or related to the use or occupancy of the Premises or the operation of Tenant's business. This policy must contain, but not be limited to, coverage for premises and operations, products and completed operations, maintenance and use of owned, non-owned, or hired automobiles, bodily injury, and property damage. The policy must have limits in an amount not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate. This insurance will include a contractual coverage endorsement insuring the performance by Tenant of its indemnity agreements contained in this Lease.

(ii) Tenant may, at its option, obtain insurance policies covering its furnishings, fixtures, equipment and articles of personal property (collectively, "Personal Property") in the Leased Property, and Tenant shall either cause Landlord to be named as an insured party under

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such policies (without entitling Landlord to receive any loss proceeds thereof) or obtain the insurer's waiver of all rights of subrogation against Landlord with respect to losses insured under such policies. Landlord shall have no liability for any damages incurred to any of Tenants furnishings, fixtures, equipment and articles of personal property in the Leased Property.

Tenant shall provide to Landlord prior to commencing any demolition or other activities pursuant to this lease, certificate(s) of insurance evidencing the insurance required pursuant to this Section 25.

(b.) Recognized Insurance Companies All insurance provided for in this paragraph shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of South Carolina and shall be written on the standard policies of such companies and shall provide for no deductible in excess of $100,000.00 ($250,000.00 as to flood insurance, as applicable) if available at reasonable cost. Tenant shall be responsible for any deductible.

(c.) Landlord's Non-Liability, Tenant's Own Insurance Other than for loss or damage caused by or resultant from the gross negligence or willful misconduct of Landlord, Tenant hereby waives all right of recovery which it might have against Landlord, Landlord's agents and employees, for loss or damage to Tenant's furniture, furnishings, fixtures, equipment, chattels and articles of personal property located on the Leased Property, nor shall Landlord be liable for any business interruption, or injury to or death of persons occurring in the Leased Property, or in any manner growing out of or in connection with Tenant's use and occupation of the Leased Property or the condition thereof, notwithstanding that such loss or damage may result from the negligence or fault of Landlord.

Tenant shall advise Landlord promptly of the applicable provisions of such insurance policies and notify Landlord promptly of any cancellation or change therein.

All insurance carried by Tenant as to the Leased Property or as to any property located thereon or therein, whether or not such insurance is carried pursuant to this Lease, shall provide that the insurer waives all right of subrogation against Landlord with respect to losses insured under such policies.

26. INDEMNITY. Tenant is and shall be in exclusive control and possession of the Leased Property as provided herein, and Landlord shall not be liable for any injury or damage to any property or to any person happening on or about the Leased Property, nor for any injury or damage to the Leased Property, nor to any property of Tenant, or of any person contained therein except as a result of the gross negligence of Landlord or Landlord's employees, agents, contractors, licensees and invitees.

Tenant shall indemnify and save Landlord harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against Landlord by reason of:

(i) Any work or thing done in, on or about the Leased Property or any part thereof;

(ii) Any use, occupation, condition, operation of the Leased Property or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto or any occurrence on any of the same;

(iii) Any act or omission on the part of Tenant or any subtenant or any employees, licensees or invitees;

(iv) Any accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Property; or any part thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto; and

(v) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease, or recording of this Lease. The provisions of this paragraph shall survive the expiration or earlier termination hereof.

Nothing contained herein shall be construed as an indemnification for injury to persons arising as a result of the gross negligence or willful misconduct of the Landlord.

28. FIRE INSURANCE RATE AND REQUIREMENTS. Tenant agrees, at its own cost and expenses, to comply with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction and any similar body, and the insurance company insuring the building.

29. ACCRETED LAND EDUCATIONAL PROGRAMS. Subject to existing laws and restrictions as applicable to the accreted land, the Tenant and the Landlord shall jointly develop and implement educational programs for students in the accreted land. It shall be the obligation of the Tenant to pay the costs of implementing such plans as are mutually agreed upon by the parties. Such plans shall be developed prior to completion of the construction of the new school so that these teaching areas in the accreted land will be available for use upon occupancy of the new school.

30. ZONING ENFORCEMENT POWERS. The parties hereby agree that all enforcement powers of the Town of Sullivan's Island, as contained in the Zoning Ordinance of the Town of Sullivan's Island, shall apply to the Leased Property and the construction, operation, occupancy, and use of the new school as if the Leased Property were zoned in any zoning

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category of the Zoning Ordinance. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to use any and all enforcement procedures of the Zoning Ordinance of the Town of Sullivan's Island on the Leased Property in its sole discretion.

31. ZONING. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to zone and to rezone the demised property. In the event of any conflict between the provisions of this lease agreement and the Zoning Ordinances of the Town of Sullivan's Island, the provisions of this lease plus the enforcement powers of the Zoning Ordinances shall apply, plus any new applicable provisions of the Zoning Ordinance. PROVIDED, HOWEVER, it is hereby acknowledged and agreed by Landlord and Tenant that for all purposes and in all respects the Leased Property shall be and is grandfathered under the Zoning Ordinances of the Town of Sullivan's Island (whether now existing or hereinafter enacted). To confirm and clarify by way of example only and not in limitation of the foregoing proviso, in the event of partial or full destruction of or damage to the school facilities constructed on the Leased Property by Tenant, provided that the plans and reconstruction, repair or replacement of the facilities necessary to restore such structures and improvements to what existed prior to the damage or destruction comply with the requirements set forth in this lease, the new structures and/or improvements shall be deemed in compliance, regardless of any rezoning of the Leased Property or any new applicable provisions of the Zoning Ordinances of the Town of Sullivan's Island.

32. LEGAL EXPENSES. If suit shall be brought or claim shall be made (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Property, and/or for the recovery of rent or any other amount due under provisions of this Lease, or because of any other covenant contained herein, and the breach is established, the prevailing party, in addition to all other sums and relief obtained, shall be entitled to all expenses incurred therefore, including reasonable attorneys' fees and costs.

33. TIMELINESS AND DEADLINES.

Time is of the Essence in all matters in this Lease Agreement.

34. WAIVER OF RIGHTS. No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder, or to insist on the other party's strict compliance with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

35. SECTION HEADINGS. The section headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no ay to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

36. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged into this Agreement. This Agreement may be changed or supplemented only by an instrument in writing signed by both parties.

37. ADDITIONAL INSTRUMENTS. The Parties agree to execute and deliver any instrument in writing necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever occasion shall arise including the execution of a short form memorandum of lease agreement which may be recorded at the Charleston County RMC Office by Tenant at its expense.

38. NOTICE. Any notices or demand required or permitted by law, or any provision of this Lease, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to the Town of Sullivan's Island, 1610 Middle Street, Sullivan's Island, SC 29482, or at such other address as Landlord may hereafter designated in writing to Tenant.

Any notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed to Tenant at 75 Calhoun Street, Charleston, South Carolina 29401, Attn: Superintendent of Schools, or at such other address as Tenant may hereafter designate in writing to Landlord.

39. GOVERNING LAW; ENFORCEMENT. This Agreement shall be governed by the laws of the State of South Carolina. If either party enforces the terms of this Lease by legal proceedings, the prevailing party in such proceedings shall be entitled to reimbursement from the other party to all reasonable costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the dated stated above.

Witness #1

Witness #2

Town of Sullivan's Island

BY: **Michael Perkis**

ITS: **Mayor Pro Tempore**
Town of Sullivan's Island

Witness #1

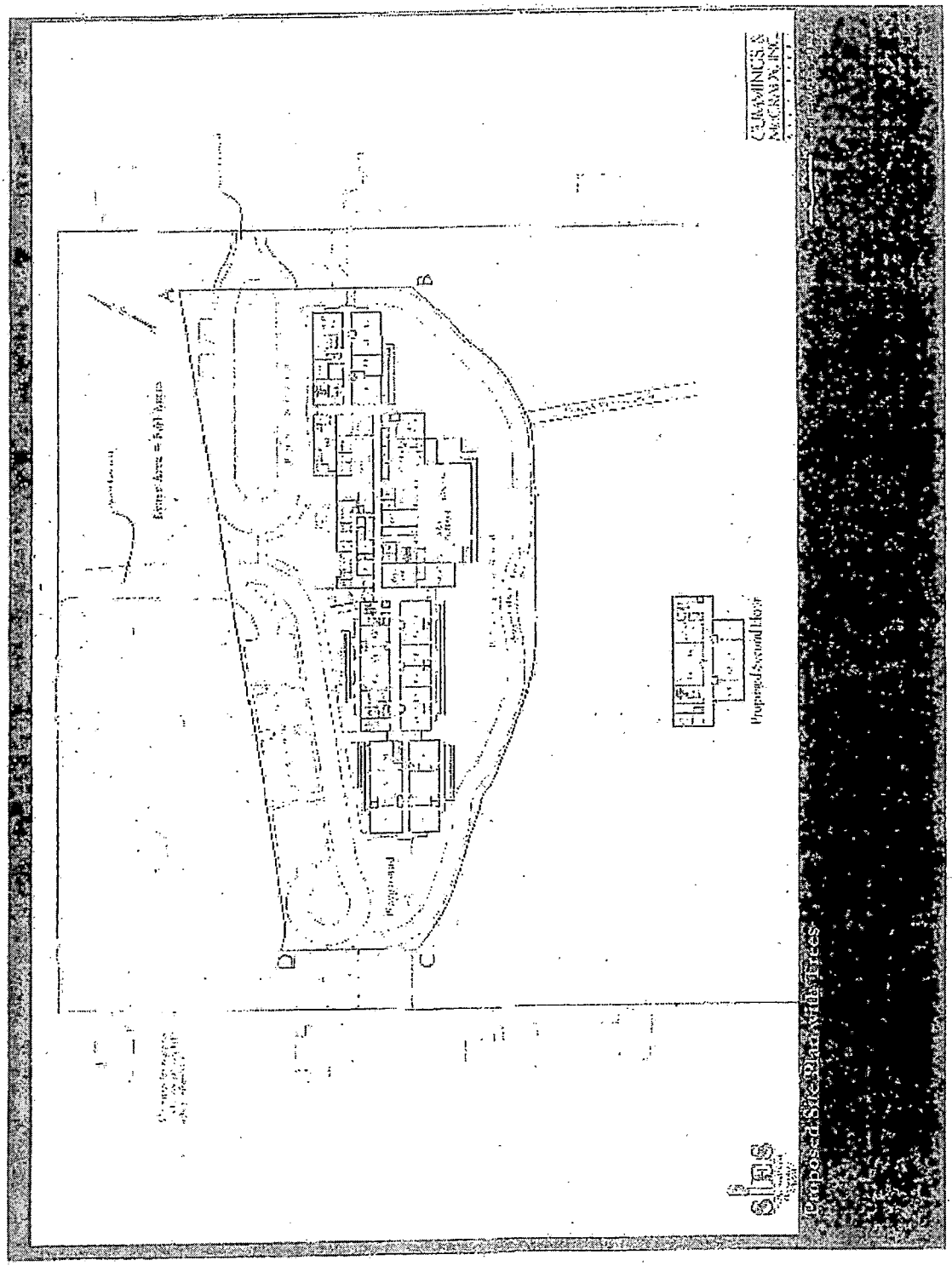
Witness #2

Charleston County School District

BY:

ITS: N.T McGinley
Superintendent
of Schools

EXHIBIT A


CUMMINGS & McCRAW, INC.
Proposed Storage Building with Trees
Proposed Second Floor
A
B
C
D

October 18, 2011

The regular meeting of Town Council was held on October 18, 2011 beginning with Executive Session at 5:00 p.m. at Town Hall, all requirements of the Freedom of Information Act having been satisfied:

Present were: Carl J. Smith, Mayor
Mike Perkis, Mayor Pro Tem
Hartley Cooper, Councilwoman
Jerry Kaynard, Councilman
Madeleine McGee, Councilwoman
Patrick O'Neil, Councilman
Mary Jane Watson, Councilwoman

Mayor Smith called the meeting to order.

Motion was made by Councilman Kaynard, seconded by Councilman O'Neil, to go into Executive Session at 5:00 pm for Legal advice – Bluestein et al. vs. Town of Sullivan's Island and the Board of Zoning Appeals decision for 2063 Middle Street; and Personnel – Design Review Board applications.

Motion was made by Councilman Kaynard, seconded by Councilwoman Watson, to come out of Executive Session at 6:10 pm, carried unanimously.

Mayor Smith stated that no votes or action took place during Executive Session. The Pledge of Allegiance was then led by Mayor Smith, followed by the invocation by Councilwoman Watson. Town Hall was packed with residents, and there were two members of the media present.

Mayor Smith presented a Resolution of Appreciation to Nicky Bluestein for his four years of service to the Planning Commission.

Motion was made by Councilman Perkis, seconded by Councilwoman Watson, to approve a Resolution recognizing the life saving and service efforts by Town Staff, carried unanimously. Mayor Smith read the Resolution and it will be presented to department heads at the November Council meeting.

Motion was made by Councilman Perkis, seconded by Councilwoman Watson, to amend the agenda to move Section IV, No. 1, Ratification of An Ordinance to Amend the Ordinances of the Town of Sullivan's Island, South Carolina, Chapter 14, By Adding a New Section 34, Regarding Lease of



Property to Charleston County School District, to before the approval of the September minutes, carried unanimously.

The floor was opened for comments from the citizens. Kathy Post, 1907 I'on Avenue. She stated she had received a copy of signatures supporting the building of the school. Of those signatures, 500 were from Sullivan's Island of which 265 were registered Sullivan's Island voters, and of those 265, 71 signed the more recent petition for referendum, leaving the actual number at 194. She continued that their current petition was signed after the actual size and student population was known, unlike the previous petition. She stated there have been accusations and misunderstandings, and everyone needs to talk with one another. She asked Council to remember their duty to all their constituents, and they will continue with their stand no matter what happens.

Jen Smith, 2520 Raven Drive. The school was the main reason her family moved to Sullivan's Island, and all four of their children attend Sullivan's Island Elementary. The vote for a 500 student school has already been decided by Town Council and the Charleston County School Board. These are people we have elected as citizens to make decisions based on fact. It is going to be a 500 student school, or no school at all; and Sullivan's Island needs a school.

Sara Church, 1612 Atlantic. Her daughter attends Sullivan's Island Elementary, as will her son. She addressed the issue being discussed by some that under certain circumstances it is possible to build the school rooms smaller than the recommended standard. She emphasized that the children need all of the room, and the important work going on inside the school should not be short changed by the outside of the building. She asked people to sign a petition in support of a 500 student school as in the ordinance to be executed tonight, and gathered 260 signatures in less than one week. The current school has a student population of 420 and 80 more students will not make it lose its small community feel.

Barbara Spell, 1702 Atlantic Ave. Barbara Spell stated that a petition for a special referendum to determine the future size of the school has been turned into the Town, and certified by the Election Commission. Based on this certification, the group known as Islanders for a Smaller School requested that Town Council defer the ratification of the lease until after the referendum has been held. The points they want to emphasize are the land is owned by the Town and will be leased to the school district for $10 for 75 years; size, scope and type are the key issues; the school as proposed contradicts neighborhood compatibility and design ordinance passed by previous Town Councils.

Lisa Short, 2901 Jasper. Lisa Short stated she is a member of the Charleston County Constituent Board for District 2, but is also a mother whose children attended Sullivan's Island Elementary, and now attend Academic Magnet. She stated everyone should be concerned about the lease. There are 40 years left on the lease as it is. The new lease puts restrictions on what the school district can do with

the property, it tightens the amount of land, the buffers are brought in on the sides, and there are specifications for building size. The school will increase property values, attract young families, and better the entire community.

Wayne Stelljes, 3104 I'on Avenue. Mr. Stelljes stated many people have indicated they are most concerned about the aesthetics of the school. He asked the rhetorical question if it is really about aesthetics, how many have written to Town Council or letters to the editor, or put a petition together before the school was vacated? The old school was not aesthetically pleasing.

Frank Barnes, 2108 Atlantic Avenue. Mr. Barnes moved his family to its current location because of the proximity to the school, where his three young children will go to school. He is looking forward to a new school and hopes this process will be over soon.

Eddie Fava, 2424 Myrtle Avenue. Mr. Fava stated he is not a parent, but as an architect believes the building is a little too big. He stated if there had been some public review process from the beginning this probably would not be happening, but there is still time for it to be resolved.

Courtney Hopkins, 2424 Jasper Avenue. She stated she has a 3-1/2 year old, and would like the school to be rebuilt on the Island as quickly as possible.

Hannah Dodson, 1462 Thompson Avenue, stated the character of the Island needs to be preserved, and the people of the Island are what make up the character. The school brings permanent residents to the Island, and people here are more important than what the building looks like. She encouraged keeping the character of the Island by getting the school built.

Rhonda Sanders, 1411 Thompson Avenue, thanked Council and expressed her appreciation for their time and effort.

Martha Smith, 1908 Flag Street, stated she did not understand why people are frightened by the referendum because it is a constitutional right. Everyone wants the best school for our children, and the referendum will give the residents an opportunity to vote on the school they want.

Loren Ziff, 1412 Thompson Avenue. This school is going to be built, and the Charleston County School Board reaffirmed its commitment to a 500 student school. Everyone needs to get together not at this level, but with the architect, and talk about design.

Eric Dodson, 1462 Thompson Avenue. Mr. Dodson stated that the City of Isle of Palms had a cute recreation center which later was torn down and a large recreation center was built. Sometimes bigger is better. Sullivan's Island residents can enjoy the resources of Isle of Palms and Mt. Pleasant; Sullivan's Island should

welcome others into our community. The Town needs to reach out and be a community outside of our waters.

Kevin Klemm, 2514 Myrtle Ave. Mr. Klemm stated that to meet current building codes, the proposed school would not be much smaller even with 100 less students. The way the referendum is written, wanting the same size school that existed to be built already triggers it because a new school for 350 students would have to be bigger to comply with the current code.

Skip Scarpa, 2102 Atlantic. Mr. Scarpa said that everybody basically wants the same thing – a new school. Only one option was given and not everyone agreed with that option. He stated he hopes it can be worked out, and the Town will end up with a great school.

The public comment was closed by Mayor. The Mayor thanked everyone for their comments and said it was a very important decision for this Town and Town Council.

Councilman Perkis stated he wanted to recognize Charleston County School Board member Cindy Coats in the audience, and appreciated her taking the time to come to the meeting.

Mayor Smith stated Council had amended the agenda earlier in the meeting to have the ratification of the ordinance at this time. **Mayor Smith first asked for a motion to defer ratification until after the referendum**. Councilman Kaynard asked that Council be able to respond to the resident comments. Councilwoman McGee added the Council would like to hear from legal counsel tonight, as well.

Councilman O'Neil began by asking Attorney Larry Dodds to remind Council what Council was required to do in terms of ratification. He also asked if there were a referendum after Council ratified the ordinance, what would the impact be to the agreement with the School Board?

Attorney Dodds responded that Council was obligated to ratify the ordinance unless it voted not to ratify it by unanimous vote. Concerning the petition for the referendum, there is actually a state statute called initiative referendum, and it was created by the State so residents of municipalities can enact certain types of ordinances themselves that they cannot get their Council to do. The petition before Council would need to be reviewed to determine if it is the type that could require a referendum. If there were a referendum after Council ratified the ordinance and signed the lease, a referendum may be binding on the Town, but it is not binding, in his opinion, on the School Board, because that is a contract entered into with the School Board. The School Board would still have the right to enforce the lease, regardless of what ordinance is perhaps passed by the Town. He continued that Council has 60 days to review the petition to determine if it wants to pass it or not

before it has to decide on a referendum or whether it even fits into the category that could require a referendum.

Councilman O'Neil stated he did not have much to say that he hasn't said several times before, but continued that it is a very important issue to everyone and hoped for constructive interaction with the School Board and the architects regarding the design of the building. He supports the up to 500 student count to ensure a school will continue to be on the Island, and believes everyone can work together to bring about the best design possible for the Island.

Councilman Kaynard thanked everyone for their interest and participation in the school issue. He stated that Council explored every possibility for a smaller school; however, the School Board reiterated what their policy was, and that they could not make an exception for Sullivan's Island Elementary School. He stated he was trying to understand exactly what the residents wanted from the petition, and was concerned about the language in the petition because it appears residents may be asking a question that regardless of the outcome of the vote, it would not change the results. He continued that he did not want anyone to leave thinking that the issue of a referendum was the only option. He also mentioned the petition would need to be reviewed since the Supreme Court ruled that zoning petitions cannot be adopted by initiative referendum, and this may be a zoning petition. He encouraged all to continue to be involved in the design phase.

Councilman Perkis stated that in the School Board's September meeting it reaffirmed its existing policy to not build a school for less than up to 500 students, and that an exception would not be made for Sullivan's Island Elementary School. He stated that he appreciated the intent of the petition, but he could not support the petition because 1) the elected officials and not the Design Review Board should make the decisions, and 2) to revoke an agreement that allows for construction of a school with more than the square feet of existing building would limit the size of the school to 150-160 students, and that would mean no school would be constructed. It sends the wrong message.

Councilwoman Watson stated that she has nothing to add that has not been said previously.

Councilwoman McGee thanked everyone for coming, and stated that the 500 student policy is the right one for the County; therefore, the Town needed to live within it. She continued that she wanted to speak about the issue of community. She stated it made her proud that the most important issue was our children, and suggested this was perhaps the passing of the baton of our community to the next generation. She said what Council heard is that they have made some mistakes; however, Council thought they had engaged everyone that cared about the issue. She continued that it was now known to truly engage people, those meetings need to happen on the street, at their sidewalk, at their door front, and it needs to be determined the best way to handle these communications. The process forward

needed to be working together on the design for up to 500 students. She concluded by stating she wished the oyster roasts were as in the past when only residents came because she sees a community that does not have enough opportunity to get together and know one another; and hopes to find some way to build these bridges.

Mayor Smith stated he will continue to vote against the ordinance, and he agreed with the petition that the Town residents did not have the opportunity for involvement as they should have had in the process. He stated the architectural drawings presented last week were very disappointing and totally inappropriate for the Island. He emphasized he was not against the school but was against the current design. He stated if there was not a motion to defer the ratification tonight, he would relinquish the signing to someone else.

Attorney Dodds questioned that there was a motion on the floor to defer ratification until after the referendum. Mayor Smith clarified that he asked for a motion for deferral, but no motion was made.

Mayor Pro Tempore Perkis duly ratified Ordinance No. 2011-05, An Ordinance to Amend the Ordinances of the Town of Sullivan's Island, South Carolina, Chapter 14, By Adding a New Section 34 concerning lease of certain real property to the Charleston County School District. Mayor Pro Tempore Perkis then signed the attached lease agreement between the Town of Sullivan's Island and the Charleston County School District.

Motion was made by Councilwoman McGee, seconded by Councilman Perkis, to defer the approval of the September minutes until the next meeting so the minutes can be amended to reflect more specific information regarding the fiscal year 2011 audit presented by auditor Larry Finney at the September meeting, carried unanimously.

Reports and Communications

General and New Correspondence – Administrator Benke stated three items of correspondence were received. The first one is the petition received to reconsider the construction of the Sullivan's Island Elementary School as proposed. There were 277 signatures on the petition, and Charleston County Elections has reviewed and struck 16 names off the list; therefore, 261 is the final signature count. Other correspondence received was from Wayne Stelljes regarding the petition, and from Pat Votava regarding the commercial district overlay plan.

Attorney Report – There was no Attorney's report.

Board and Commission Reports –

Motion was made by Councilman O'Neil, seconded by Councilman Perkis, to amend the agenda to add an item to consider the Board of Zoning Appeals decision on the Atlanticville property after Committee Reports as Item No. 11, carried by a vote of 6, with Councilman Kaynard abstaining.

Administrator Benke reported that Planning Commission Chairman Hal Currey could not be present at the meeting tonight, but wanted to let Council know that the Commission believes there are some inconsistencies between Chapter 17 of Town Ordinances (Planning Commission) and Zoning Code Section 21-12 (A) (2) regarding plat approval, so they will review at the next Planning Commission meeting.

Administrator's Report, Administrator Benke.
Sullivan's Island Polling Place - The Charleston County Board of Elections and Voter Registration has forwarded a request to the Department of Justice which would change the Sullivan's Island polling place from the elementary school at 2015 I'on Avenue to 3222 Middle Street at Sunrise Presbyterian Church.
SCDHEC Beach Monitoring – DHEC has provided the beach monitoring results for August 2011 indicating all stations were satisfactory.
Charleston County Community Services Department Public Hearing – Ms. Betty McZorn would like to advertise the public hearing for the Community Services Program on November 15, 2011 at 5:45 pm. The purpose of the public hearing is to solicit citizen participation and receive public comment.
Correspondence Received – Margaret Skinner's resignation from the Tree Commission on September 26, 2011 was received. A resolution of appreciation will be presented to Ms. Skinner at the November meeting; as well as a resolution to Jeri England for her service to the Edgar Allan Poe library.
Town Hall Trailer Lease – The lease agreement for the trailers serving as the temporary Town Hall will expire in September. Building Official Randy Robinson and Comptroller Jason Blanton discussed with Anton Mobile Industries, and the company is willing to offer a 21 month lease at the same rate.
Town Council 2012 Calendar of Meetings –Council needs to consider several dates in 2012 when either Council meetings or Council workshops would coincide with a holiday or religious day.

Ways and Means Committee, Councilman Perkis. Monthly report rendered. The new First Federal IDC Money Market Account has been set up with a rate of ½ of one percent as previously approved. There was initial review of the September 2011 financial statement. For all funds, the revenue received during the month of September was as predicted for this time of year. In reviewing expenses, the Town had Banks Construction make needed repairs to sidewalks throughout the Town. This cost approximately $50,000, and was paid with revenue received from hospitality taxes. The Sewer Department paid approximately $4,800 to a vendor which is related to an energy efficiency project being done at the Sewer Plant. This project is being funded 100% by a grant. The price of the project is expected to be around $60,000. The project will decrease the amount of electricity used by the

plant. The cost of the relocation and operation of the temporary Town Hall as of September 2011 was $154,115. Other points of interest were this year's principal for the Town's general obligation bond along with the accrued interest was paid during September. Approximately $25,000 was received from a grant to purchase a boat motor and two fire pumps for the fire department boats.

The contract for the phone service with AT&T has expired. Administrator Benke stated there are not many third-party providers that can meet the requirements of the Town. Windstream, a vendor formerly known as Nuvox, subcontracts from AT&T and provides voice and data services but not back-up services. Windstream is providing a competitive service at a lesser cost, and is used by other municipalities. **Motion was made by Councilman Perkis, seconded by Councilman Kaynard, to direct staff to negotiate a contract with Windstream for our voice/data service, carried unanimously.**

Councilman Perkis received the assessed values and appraised values of island property from Charleston County. Fifty-seven percent of our appraised value are at 4%.; therefore, 43% are at 6%. He continued that Council needed to review the numbers and set a millage rate for the Town. After discussing the calculations, it was agreed the new millage for the residents of Sullivan's Island will go from 26.2 to 27.8, and increase of 1.6 mills. In the public statements we previously made, we stated it would be approximately 27.7. That would generate $1,731,993 and after the local option of $135,000 is deducted, the net to the Town would be $1,597,000. There are two unknowns in that calculation. Charleston County uses a 3% non-collection rate, and only $17,000 in appeals. Since we budgeted $1,570,000 it is very close. He continued that every mill is about $50, so each household's tax, on average, would increase about $75.00. **Motion was made by Councilman Perkis, seconded by Councilwoman Cooper, to approve the increased millage rate to be .0278, carried unanimously.**

Personnel Committee, Councilman Kaynard. Monthly report rendered. Nicky Bluestein was presented a Resolution of Appreciation for his service to the Planning Commission earlier this evening, as well as the recognition of life saving and service efforts by Town Staff. A Resolution recognizing the Town Staff will be presented at the November meeting. The vacant seat on the Design Review Board was discussed in Executive Session earlier this evening. **Motion was made by Councilman Kaynard, seconded by Councilwoman Cooper to appoint Rhonda Sanders to the Design Review Board, carried unanimously.** Jody Stewart was hired as an Operator in the Water & Sewer department effective October 3, 2011 and Eric Stinnett was hired as a Firefighter for the Fire Department effective October 3, 2011. Firefighter Jody Cox resigned effective October 2, 2011. There will be a flu vaccination clinic for Town Staff and family members on Wednesday, October 19 at the Fire Station.

Water and Sewer Committee, Councilman Perkis. Monthly report rendered. A Water and Sewer Committee meeting was held on October 18, 2011 at 8:30 am in the Water and Sewer Administration building. The purpose was to discuss infrastructure easements and impact fees in the Commercial Overlay

Districts, and three options are being discussed. Also, Dun Right Services will reline twelve manholes during the next two weeks.

Building and Construction Committee, Monthly report rendered. Councilwoman Cooper. The Committee will coordinate with the Real Estate Committee and staff as the options of a new Town Hall are evaluated. The Personnel Committee discussed the Zoning Administrator position the previous week and will continue to move forward in discussion with staff/Council regarding the position. Island Club Construction Plans – The Building Official has been working with the Island Club to complete building upgrade plans. Mr. Robinson stated that he has talked with three contractors and the work will start in a couple of weeks. Sidewalk Removal – The Town has received a request to remove the sections of sidewalk in front of 1456 and 1460 Thompson Avenue. The owners of the new house have asked to remove the sidewalk and the house to the east for landscaping. They have asked the S.C. Department of Transportation if they could remove it and said they were told they could proceed if the Town agreed to the removal. After discussion the consensus of Council was to not authorize the removal of the sidewalks and taking over the rights-of-way.

Fire Committee, Mayor Smith. Monthly report rendered. Assistant Fire Chief McDaniel reported on the structure fire at 2602 Myrtle Avenue on October 2, 2011. The Fire Prevention Night at the Fire Station was a tremendous success.

Recreation Committee, Councilwoman Watson. The clean-up date for the Park has not yet been determined. The dollhouse in the park will be relocated, probably next week. Administrator Benke is reviewing the RFP's and should appoint a engineer for the tennis court project in the next few days. The Bike Scavenger Hunt was held on October 14th, and 72 people participated. Councilwoman Watson is meeting with the Island Club and will have an update of that meeting.

Real Estate Committee, Councilman O'Neil.
Sullivan's Island Gadsden Cultural Center Lease – The lease agreement with the Sullivan's Island Gadsden Cultural Center expired on June 30, 2011 and is on a month-to-month basis. This item will be discussed with George Kablick.
Consideration for a Permanent Town Hall – David Creech of Creech and Asssociates met with department heads concerning space needs last week. He is compiling the information and should give feedback the next few weeks.
Charleston County School District Property Lease – The ordinance was ratified tonight, and the lease was signed by Mayor Pro-Tem Perkis.
Urban Greenbelt Grant Project – Attorney Larry Dodds is waiting to hear from the Environmental impact representative before proceeding further.
Open Space Protection for Town Parcels – Councilman O'Neil spoke with Mr. John Giralt, who feels his Board approves of the concept in the new agreement, and it is being reviewed by their attorney. It was agreed to wait another week or two for the baseline assessment.

Accreted Land Management Plan – The next workshop for this plan will be on Friday, November 4, 2011 from 2:30-5:00 pm at Town Hall.

Police Committee, Mayor Smith. Monthly report rendered.

Streets and Maintenance Committee, Councilwoman McGee.
Managed Parking - Administrator Benke reported that he and the representative from Tindale-Oliver and Associates are completing the scope of work this week. There should be a schedule ready in December, and communicating with the public will be discussed at that time.
Department of Transportation Items – Administrator Benke reported that the S.C. Department of Transportation verbally acknowledged they are moving forward with the trial period for the all way stop at Station 22-1/2 Street and Middle Street. A survey tool will be placed on the website after it is installed.
The replacement of station markers has been completed.
The crosswalks have been completed. Chief Howard is further researching the knockdown signs, and they will be placed at Middle Street and Stations 20-1/2, 22, and 22-1/2.

After discussion of the Board of Zoning Appeals Decision concerning Atlanticville Restaurant at 2063 Middle Street, **motion was made by Councilman O'Neil, seconded by Councilwoman McGee, for Town Council to hold a hearing at a Special Meeting to determine whether the Order of the Board of Zoning Appeals in the Atlanticville case be overturned pursuant to SC-629-800; carried by a vote of 6, with Councilman Kaynard abstaining.**

Motion was made by Councilman O'Neil, seconded by Councilman Perkis, to authorize the Town Zoning Administrator to appeal the decision of the Board of Zoning Appeals in the Atlanticville matter to Circuit Court should that be necessary, carried by a vote of 6, with Councilman Kaynard abstaining.

Motion was made by Councilman O'Neil, seconded by Councilman Perkis, to have First Reading, by title only, of Ordinance No. 2011-06, An Ordinance to Amend Sections 21-9, 12, 19, 21, 22, 24, 27, 31, 48, 49, 50, 51, 52, 53, 54, 59 and 143 of the Zoning Ordinances for the Town of Sullivan's Island, carried by a vote of 6, with Councilman Kaynard abstaining.

Motion was made by Councilwoman Watson, seconded by Councilman O'Neil, to adjourn at 9:15 pm, carried unanimously.

Respectfully submitted,

Ellen Miller

January 17, 2012

The regular meeting of Town Council was held on the above date at Town Hall, all requirements of the Freedom of Information Act having been satisfied:

Present were: Carl Smith, Mayor
Mike Perkis, Mayor Pro Tem
Hartley Cooper, Councilwoman
Jerry Kaynard, Councilman
Madeleine McGee, Councilwoman
Mary Jane Watson, Councilwoman

There were four members in the audience, and no members of the media present.

Mayor Smith led the Pledge of Allegiance, followed by a prayer by Councilwoman Watson.

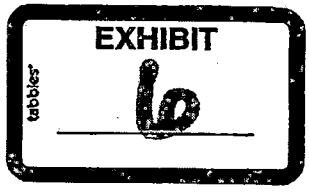
Motion was made by Councilwoman Watson, seconded by Councilman Perkis, to amend the agenda to have the Executive Session after the public comment section, and to add to the executive session legal advice for the accreted land litigation, carried unanimously.

Mayor Smith opened the meeting for public comment.

Craig Askew, East Cooper representative for Charleston County School District, stated as a Board member he supports the rebuilding of Sullivan's Island Elementary School. It is a hard task, and he encouraged engagement of everyone to work together.

Eddie Fava, 2424 Myrtle, thanked Mr. Askew and stated he supported Mr. Askew's comments; however, he believes the issue still remains the size of the school. He also stated he, along with Kelly Messier, would like her comments from the last meeting regarding the school to be included in the minutes in their entirety. Mayor Smith stated her comments were reflected, but not the entire letter. Mr. Fava also commented that all residents should have received a copy of the survey letter recently distributed.

David Tompkins, 2630 Goldbug, inquired about the Raven Drive extension. Mr. Tompkins was also representing Michael Robinson, who could not be present. He stated he sent a letter to Council in October 2011 and a response was never received, nor was it mentioned in the November Council minutes. He continued that they object that agreements have suddenly been written, that the area of his property will be gravel when the remainder of the street is paved; and for them



having to pay for infrastructure for the entire footage of their lot if the contractor is putting in the infrastructure. He also questioned why the Town was purchasing their section now. Mary Bradley Heath stated she and her sister own a lot on Raven Street, and they do not have access to the lot. Councilman Perkis stated that the Town is required to provide access for infrastructure for water and sewer, although it is not required to pay for it. Water and Sewer Manager Greg Gress has worked with the contractor on specifications to properly provide water and sewer for all the property owners. There is no start date, but it is on the agenda to consider for approval tonight during the Administrator's Report.

David Smith, 1512 Poe Avenue, stated he is in total support of the new Sullivan's Island Elementary School.

Kathy Post, 1907 Ion Avenue, questioned the status of the referendum of the school.

Pat Votava, 2214 Jasper Blvd., thanked Chief Stith and his staff for their work on the Polar Bear Swim. She stated the traffic diversion while the block of Middle Street was closed was too much traffic into the neighborhood. She asked them to review the situation for the next event, and to please limit St. Patrick's Day celebration to one day.

Vince Graham, 1401 Middle Street, stated he read the Sullivan's Island Elementary School statement on their website, and was concerned that the school is not being done for the children but for mercenary purposes to create wealth for special interests which will profit from the supersized warehouse of a school. By advancing the mega-school Council is failing to live up to the school's vision statement. If Council does not move forward to scheduling the referendum, they are failing its citizens and the spirit of democracy.

Louis Yuhaz, 3014 Ion Avenue, agreed with Kathy Post and would like an answer regarding the status of the referendum. He stated that he is in favor of the school, but wonders why the school cannot be placed in the business district, and open up the other land to small cottages and a beautiful seaside park. Mayor Smith stated that Attorney Trenholm Walker was present for legal advice on the referendum during Executive Session, directly after public comment.

Dr. Selby, 2602 Atlantic Avenue, stated this is a very unusual island, and the school is a tremendous asset and integral part of Sullivan's Island.

Jen Smith, 2520 Raven Drive, distributed to Council a letter she received the previous Friday. She stated the petition with the logo with the small 's' for Sullivan's Island Elementary School was very misleading and inappropriate. Mayor Smith stated he agreed with and signed the letter; but did not write the letter.

Barbara Spell, 2702 Atlantic Ave., stated the issue is not about having a school, it is whether the school will fit into the island. A certified petition was presented to Council before the lease was ratified, and the residents are entitled to a referendum and wanted to know when it will be scheduled.

Skip Scarpa, 2102 Atlantic Avenue, stated if Council thinks the majority of people on this island want to build the school that has been proposed, then they should have a vote and end this.

Sara Church, 1612 Atlantic Avenue, stated she doesn't understand giving people a choice on a referendum when the school district has already said they are not willing to allow smaller school. She continued that the school and design discussion need to move forward.

Gary Lovell, 2424 Middle, inquired if residents can get temporary business licenses to charge for parking for people who park in our yards during the Polar Bear Swim; and also that food trucks not be allowed that compete with the businesses here. Mayor Smith stated that the food truck was not anticipated and should not have been there. Councilman Perkis stated he met with the owner of that business to prevent it from happening again.

Kathy Post, 1907 I'on Avenue, stated the point of only this school or no school is not true. There are other options to pursue.

Christine Hamrick, 2708 Middle St., stated she has been to CCSD school board meetings and no one has presented other options.

Barbara Spell, 2702 Atlantic, stated Section 302.1 of the Office of School Facilities (OSF) says that a district can request that a school not meet the minimums as long as they provide the plans for that. That has been a fact that has been repeated over and over. Also, OSF Section 302.1 states that the school has flexibility, and that the SC Department of Education wants districts to be able to be flexible.

Karen Coste, 322 Station 19 Street, stated that she and Barbara Spell have gone to different schools in Charleston County, and the vast majority is well under 500 students. They have spoken with both principals and Nancy McGinley. There are many options to be considered.

Wayne Stelljes, 3104 I'on Avenue, stated he is encouraged by the fact that Town Council is continuing to move forward with the school.

Vince Graham, 1401 Middle Street, added that he is not against building a school; he is against building a 74,000 square foot school.

Motion was made by Councilwoman Watson, seconded by Councilman Kaynard, to go into Executive Session at 6:50 p.m. for legal advice on the

Sullivan's Island Elementary School petition, the Urban Greenbelt Grant, the American Tower, and the Accreted Land litigation, carried unanimously.

Motion was made by Councilwoman Watson, seconded by Councilwoman Cooper, to come out of Executive Session at 7:50 p.m., carried unanimously. Mayor Smith stated no votes or decisions were made in executive session.

Motion was made by Councilman Kaynard, seconded by Councilman Perkis, to move forward with a declaratory judgment to name a Smaller Sullivan's Island Elementary School group. Mayor Smith stated that Council had already made the decision to seek a declaratory judgment on the referendum. That has been in motion, and Council has reaffirmed that decision, but also to name the Smaller Sullivan's Island Elementary School group in the judgment.

Councilman Kaynard explained that in a prior meeting, the Town Attorney raised questions as to whether the petition should go to a referendum. Town Council is basically reaffirming the decision to seek a declaratory judgment on the referendum, and Council needed to give a name to the supporters of the petition. By naming the group, anyone with the group or those who have spoken in front of Council, would have an opportunity to participate in the court proceeding to state opinions and argue what should be done, and what they want the Court to do.

Councilwoman Watson called for the question. **Motion carried unanimously.**

Motion was made by Councilman Kaynard, seconded by Councilwoman McGee, to approve the minutes of regular meeting on December 13, 2011, as amended stating that Kelly Messier's letter will be available in the official files, carried unanimously.

Reports and Communications

General and New Correspondence - Correspondence was received from Judge Michael Molony thanking Council for its vote on the school; the Rover family thanking the Fire Department for their help with their house fire; from Gregory Shue regarding the school's design; from Dawson Cherry thanking Officer Botticelli regarding a motor vehicle and bicycle incident; from Michael Robinson regarding previous letters sent about Raven Drive; Gary Visser supporting the new lease for the school; Christine Hamrick supporting the Council's effort to rebuild the school; Steve Hamontree calling for a halt to construction plans of the school until a referendum is held; and Elizabeth Tezza expressing concerns about the 2012 Polar Bear Swim. Councilwoman McGee commented that a committee meeting should be held soon to begin discussion on the options for next year's Polar Bear Swim. Mayor Smith added that a permit fee should also be discussed.

Councilwoman McGee distributed a letter to Council from Rick Graham regarding motorists blocking driveways.

Attorney Report – no report.

Boards and Commissions
Planning Commission – Chairman Hal Currey reported the Commission would hold a public hearing on Section 21-12 of the Zoning Code at their next meeting on January 11, 2012.

Administrator's Report. Administrator Benke.
Raven Drive Extension – Attorney Clay McCullough, representing the Town, and Attorney Brian Hellman, representing the Childress', were present. The settlement agreement and various documents have been circulated, and the Town is ready to move forward. Water and Sewer Manager Greg Gress reported he was comfortable with the documents; however, information will be reviewed at the pre-construction meeting. Mr. McCullough was asked by Council to address the questions previously raised during the public comment tonight. Mr. McCullough stated this project to provide water and sewer to the Raven Drive Extension has been researched, analyzed, and discussed for five years because staff and Council were trying to alleviate concerns when possible of several homeowners impacted in different ways. The Town decided to pre-pay to lessen the impact on the other property owners. There is no obligation for the owners to pay until they have applied for a tap; there is no obligation of the Town until an owner requests assess to water and sewer. The Childress' have accepted the burden to construct the infrastructure in its entirety, and are being reimbursed by the Town for two lots' portion. There is a swale on the side of the road for stormwater, which is graded to run to the middle of the lots and then onto the Childress' property to the outfall. Attorney Brian Hellman stated that the Childress' have an agreement to grant an easement to the Town so the swale can discharge across their property. The Extension will be gravel instead of pavement. It is a State road and the State will not accept any new roads. The Town has installed gravel on other roads except for the Hagerty property, and they were willing to pay for the paving and the maintenance. Mr. Hellman added that his client paid for the cost of the road. They asked other owners to contribute but they did not; therefore, gravel will be used. Asphalt is more expensive and requires more ditching and additional drainage points to come across other property.

Motion was made by Councilman Perkis, seconded by Councilwoman Watson, to approve the Non-Exclusive Storm Drain Easement between the Town of Sullivan's Island and Childress Investments, LLC, carried unanimously.

Motion was made by Councilman Perkis, seconded by Councilwoman Cooper, to approve the Settlement Agreement between the Town of Sullivan's Island and Childress Investments, LLC, subject to mandatory binding arbitration pursuant to SC Code 15-47-10, carried unanimously.

Motion was made by Councilman Perkis, seconded by Councilwoman Cooper, to approve the Construction Escrow Agreement between the Town of Sullivan's Island and Childress Investments, LLC, carried unanimously.

Sullivan's Island Elementary School Design – The school district will hold its next charette for the school design on January 19, 2012 at Sunrise Presbyterian Church. Staff met with Cummings and McCrady earlier in the week to review the fire flow water line and emergency apparatus road relative to trees. The group has worked out a strategy to preserve a number of trees; however, the plan is subject to the water model.
Sullivan's Island Elementary School Petition – Trenholm Walker and Andy Gowder are confirmed as the Town attorneys to bring the Declaratory Judgment Action on the recently submitted petition for a smaller school.
2012 Council Retreat – Council Retreat Part 1 has been scheduled for January 27, 2012 from 3-5 p.m. at Town Hall to discuss managed parking. Council Retreat Part 2 is tentatively scheduled for March 10, 2012 at the Sewee Visitor Center (time to be determined).
Middle Street Drainage Program – Charleston County has CTC money remaining from the old Middle Street drainage project, and requested the Town's input. Staff will meet to discuss areas to use the $400,000.
Myrtle Avenue Cemetery – Chief Stith reported that they have put the poles and chains down, and are trimming inside the stones. Mayor Smith and Administrator Benke met with Father McInerny this week to review progress.

Ways and Means Committee, Councilman Perkis. Monthly report rendered. Councilman Perkis reviewed the FY2012 projections as of December 2011. The forecast is that approximately $115,000 would need to be taken from the general fund on the government side. Last year $70,000 was taken from the general fund. He stated during the February workshop, Council should review what can be done to mitigate that shortfall.

Personnel Committee, Councilman Kaynard. Monthly report rendered. Firefighter James Howard tendered his notice of resignation effective January 6, 2012. Tyler Potter has accepted full-time status for the vacant Water and Sewer Operator position. The proposed changes in the Police Department have been sent to the Police Committee for review.

Water and Sewer Committee, Councilman Perkis. Monthly reports rendered. The grant has been received from the S.C. Department of Energy, less five percent until after the audit is complete.

Building and Construction Committee, Councilwoman Cooper. Monthly report rendered. The Committee is moving forward on the process of evaluating options for Town Hall and discussing the Zoning Administrator position. Randy Robinson continues to work with the contractor for the Island Club upgrade plans. Creech and Associates is revising the space needs analysis and will forward the report. Structural and environmental work at 1610 Middle Street and 1714 Middle Street is expected during the week of January 23, 2012.

Fire Committee, Mayor Smith. Chief Stith reported that the open firefighter position has been advertised. Mayor Smith stated the structure fire at 1118 Osceola Avenue was handled very well. The house is a designated landmark structure on the historic list.

Recreation Committee, Councilwoman Watson. The Park Foundation is working on a survey to distribute to Island residents about priorities and activities at the park. Councilwoman Watson, Administrator Benke and Chief Stith will be looking at nets to possibly be used in the park to protect children from Lacrosse balls. Councilwoman McGee inquired if Battery Logan or another field could possibly be used.

Real Estate Committee, Mayor Smith for Councilman O'Neil.
Consideration for a Permanent Town Hall – Administrator Benke reported that the environmental and structural engineer inspection will begin soon at both 1610 Middle Street and 1714 Middle Street. The cost for the old Town Hall at 1610 Middle Street will be about $8,000 for environmental and 4,500 for structural. The cost for the 1714 Middle Street property will be about $8,000 for environmental and $5,648 for structural. There was discussion concerning the additional cost for the 1714 Middle Street property, and suggested to postpone that inspection until after the report for the 1610 Middle Street property was received. **Motion was made by Councilman Kaynard, seconded by Councilwoman McGee, that Council defer any expenditure on the 1714 option at this time, carried by a vote of 5-1, with Mayor Smith opposed.**

Police Committee, Mayor Smith. Monthly report rendered. The Mutual Aid Agreement with the Isle of Palms Police Department has received legal review and signed by the Administrator and Police Chief.

The changes proposed by Chief Howard in the Police Department were discussed. Councilman Kaynard stated there was the possibility of financial implications, so it should be reviewed. Chief Howard stated there is no change in the salary of the departmental budget – decreasing some/raising others. Councilwoman McGee stated if Staff had an annual plan relative to their departmental budget, Council would not need to be involved as long as they operate within those plans. She stated that when this was presented at Committee, the Committee decided there was not a significant financial implication. Councilman Kaynard added that it will sometimes be appropriate to review as changes happen after the annual budget is completed. The procedure of review and recommendation should be the same for all departments, such as the Water and Sewer department.

Streets and Maintenance Committee, Councilwoman McGee.
Managed Parking – A meeting is scheduled for January 27, 2012 to review the managed parking report from Tindale-Oliver and Associates.
Dept. of Transportation Items – The Station 22-1/2 Street stop sign test will begin sometime in February.

Motion was made by Councilman Perkis, seconded by Councilwoman McGee, to defer Third Reading on Ordinance 2011-06, An Ordinance to Amend Sections 21-9, 12, 19, 21, 22, 24, 27, 31, 48, 49, 50, 51, 52, 53, 54, 59, and 143 of the Zoning Ordinances for the Town of Sullivan's Island, carried by a vote of 5, with Councilman Kaynard abstaining.

Motion was made by Councilman Perkis, seconded by Councilwoman Watson, to have First Reading, by title only, of Ordinance 2012-01, An Ordinance to Amend Sections 18-6 and 20-1 of the Water and Sewer Ordinances of the Town of Sullivan's Island, carried unanimously.

Motion was made by Councilman Kaynard, seconded by Councilwoman Watson, to adjourn at 9:40 p.m., carried unanimously.

Respectfully submitted,

Ellen Miller

Ellen Miller

March 5, 2012

A Special Meeting of Town Council was held on the above date at Town Hall at 8:00 p.m., all requirements of the Freedom of Information Act having been satisfied:

Present were: Mike Perkis, Mayor Pro Tem
Hartley Cooper, Councilwoman
Jerry Kaynard, Councilman
Madeleine McGee, Councilwoman
Pat O'Neil, Councilman
Mary Jane Watson, Councilwoman

Mayor Pro Tem Perkis called the meeting to order and stated the public and press were duly notified according to state law. The purpose of the meeting was for general discussion of the Town of Sullivan's Island vs. Islanders for a Smaller School, et al.

Motion was made by Councilman Kaynard, seconded by Councilwoman Watson to go into executive session for legal advice on the Town of Sullivan's Island vs. Islanders for a Smaller School, carried unanimously. Councilman Kaynard also suggested the order of proceeding after executive session to be a report from the Town Attorney, followed by Council members and public input.

Motion was made by Councilman O'Neil, seconded by Councilwoman Watson, to come out of executive session at 8:25 p.m., carried unanimously.

Mayor Pro Tem Perkis asked Town Attorney Larry Dodds to give a summary of what Town Council asked of him as pertains to the petition, to give his opinion on the options available and his recommendation, and to explain how we arrived to where we are today.

Mr. Dodds stated a petition with the required number of signatures was received by the Town requesting a referendum. The petition asked the Town to pass an ordinance that would require the building of the school to conform to the Town's ordinances for neighborhood compatibility and that it be approved by the Design Review Board, or that the building be built at approximately the same size as the old building, and that any agreements the Town has with the School Board be terminated. Town Council asked Mr. Dodds to respond with his opinion to the petition. He explained that petitions for referendums do not govern all functions of Council in government. They are basically for legislative purposes, particularly not for administrative purposes. To ask Council to make sure the school is built according to the guidelines of the Design Review Board for approval, those are administrative functions. So, from the beginning the petition for referendum is defective because it cannot control administrative functions.



The second reason it is defective is that where the school is to be built is not zoned, so the Town cannot require the School Board to go before the Design Review Board or to require them to meet neighborhood compatibility unless they agree to it, and the Town cannot require them to adhere to the Zoning Ordinance. But that was known when the Town entered into the lease, and safeguards were built into the lease so they would have to get the plans approved by Council. The lease speaks to size, scale, and neighborhood compatibility; and the intent of the Town was to govern the construction of the school through the lease.

The third reason it is defective is the Town is not required to hold a referendum if the outcome of the referendum would be something that would not have an effect or could not be implemented. There have been other opinions the Town could terminate the lease and mitigate damages, but the School Board has in its discretion a remedy called specific performance. They can go to court and require the Town to adhere to the lease.

It was Mr. Dodd's recommendation to Council, regardless of his personal view, was that it was a waste of the Town's funds to proceed with the referendum. Attorney Trenholm Walker has also given Council the same recommendation.

A declaratory judgment was filed to determine whether or not the referendum should be held. The School Board was served, but there was no representative for the Islanders for a Smaller School group to accept service. Because there is not a representative and the Town does not want to name one person and put him in a position where he may not want to be, the Town is waiting for someone to step forward.

Unless a representative comes forward and accepts service on behalf of the Islanders for a Smaller School, and they will put up a bona fide contest in adversarial situation, the Town does not have a legal obligation to go forward with the lawsuit. It is Town Council's decision to make whether to proceed with the lawsuit.

Mayor Pro Tem Perkis opened the meeting for public comment.

Stephanie Smith, 1908 Thee Street, stated at this point it is not known how many people do want a big new school, or do not want a big new school. We have asked for the right to vote, and that will answer the question. Council says it wants to save the Town money; however, it continues to pay attorneys instead of paying for a referendum.

Councilwoman McGee asked Mr. Dodds if the question Mrs. Smith is proposing could have been asked – do you want a big school or do you not? Mr. Dodds responded that it may have been possible in an advisory referendum before the lease was signed, but not after the lease was entered. The lease gave the School Board the number of students it could have, along with the maximum amount of square footage, so the proposed question would again be of no avail. Hypothetically, if the lease had not been signed, Council is boxed in by the wording on the petition that was received. That is another problem with the petition because it did not frame a question for Council to pass an ordinance that could be implemented very well. That is beyond the legal problem.

Mrs. Smith responded that they had to write up the petition twice to please Council. She continued that they could write a new petition and get the required signatures again. She stated Council is supposed to represent the people who live on the island, but it will not even listen to find out if the people want a school or not.

Barbara Spell, 1702 Atlantic, stated that a number of reasons this petition was supposedly defective were given tonight, but the reasons were reasons that might be suggested to someone that they should vote against this referendum. But it doesn't make the petition itself defective. We had submitted a petition with certified signatures on October 10, 2011, eight days before the lease was ratified. We also submitted an advisory petition two weeks before that. On the afternoon of October 18, 2011 when the lease was to be ratified, we respectfully asked that Council defer ratification until the referendum had taken place. The Mayor made the motion and no one seconded the motion.

Skip Scarpa, 2102 Atlantic. Mr. Scarpa stated the referendum still needed to take place by October, and if it is not held, believed the petition signers would have the option to file suit against Council at that time.

Wayne Stelljes, 3104 I'on Avenue stated the petition for referendum does not call for a vote on the size of the school. He stated that attorney Billy Want told him that the petition would not allow for a vote on the size of the school, all it would allow residents to do is vote for a school that is no larger than the old one, or vote against that. Charleston County has already said it will not build a school for less than 500 students.

Councilman Kaynard stated Council decided to do the declaratory judgment to accommodate the opinions of the Islanders for a Smaller School, but Council could not locate a representative of that group who would take responsibility and accept the documents to start the judicial procedure. He inquired if the members of the audience were representatives of the group.

Skip Scarpa stated he could not speak for the signers of the petitioners, but believed the Town wanted to file suit against them and force them to spend thousands of dollars to defend what appears to be an unnecessary lawsuit. Council is using our tax dollars to sue them. Pay our legal fees and we will know what the judge decides.

Mayor Pro Tem Perkis closed the public comment session and asked for Council member discussion.

Councilman O'Neil asked Mr. Dodds what would happen if the referendum were held, and the Islanders for a Smaller School won the referendum? Mr. Dodds answered that it would not have any effect because there is an ordinance on the books that read like the petition, and Council would not have the ability to require the School Board to adhere to that ordinance. Council could not require the School Board to build a school of the same size as the last one because the property is not

zoned, and that right was given up in the lease. Council could require the School Board to adhere to neighborhood compatibility as the petition has it; there is something in the lease that can require that, so the net effect of the referendum if it passed would be no effect whatsoever, therefore it is a waste of time and money on the referendum.

Councilman Kaynard stated that he believed this Council tried to be frugal and not waste taxpayer money. Any cost incurred in the matter caused by the petition was not caused by an action taken by Council.

He stated Council talked to the School District for about one year before beginning the lease negotiation, which took three to four months, and the first reading was August 16, 2011 at a public meeting. Everyone had an opportunity to make a comment about the lease. The second reading was on September 12, 2011 at a public meeting. As of September 20, 2011 the lease ordinance had three public readings and discussion, and Council had not received a petition for the referendum prior to that time. Council had actually already voted three times on the lease and it was a committed decision of Council. The Town rules state there has to be a unanimous decision reversing the initial three readings of the document at ratification to stop ratification from going forward. It was already a committed decision of this Council.

As far as the cost incurred for litigation, Council actually had to choose which was the lesser expensive route. If Council were forced to fight the signed lease with the Charleston County School District, it could be a multi-million dollar verdict for damages. Council has to abide by the signed agreement, and as stated previously in meetings, if the lease had not be adopted, there was a pre-existing lease still in effect for over 40 more years. The school district could have built the school without the Town's review or permission. The only authority that Council has to review this project has come under the lease adopted in October 2011. Because many residents who came to meetings appeared to want Council to get a declaratory judgment to satisfy them as to the legal effect of the petition, Council decided to do it in the interest of everyone on the island. This judgment was sought even though Council had two solid legal opinions that supported the decision of this Council that the petition was defective because the way the question was framed.

The central question in the petition would require the Town to have a vote on a school the same size as the existing school, and that is not a fair question to the public because the Town and citizens have been told repeatedly by the school district that they will not build that size school. The Town has let everyone have an opportunity to be heard on this issue, and continued to do so in the design meetings. Because residents who signed a petition do not seem to really have an interest in pursuing it, Councilman Kaynard believes the lawsuit should probably be dropped.

Councilwoman Cooper stated that although the lease did not specify the approval of the Design Review Board, both the Design Review Board Chairman and Vice Chairman have participated in the design meetings, as well as the Historic Charleston Foundation. The project is actually a very positive project, and the hard work and dedication is paying off for the community.

Councilwoman McGee thanked those for their input, and stated since October the majority of the citizens including the Design Review Board Chairman, who signed the initial petition, are now working on the design. There is public engagement through the community process and they are comfortable with the product the Town will have.

Councilman O'Neil emphasized Attorney Dodds' and Councilman Kaynard's point that had the School District been content with the 40 plus years remaining on the existing lease they had, they could have built a 1,500 student school.

Mayor Pro Tem Perkis stated he was concerned about the money spent on this and at this point agreed that Council should not be spending any more money on it. Council has two well documented opinions that say if Council goes forward with the declaratory judgment, the action is still mute. Council is an elected body governed by the rule of law and has to make decisions based on the rule of law. He continued that he would be hesitant to serve a resident who does not want to be served.

Councilman O'Neil and Councilwoman Watson added that they agree.

Motion was made by Councilman Kaynard, seconded by Councilman O'Neil, that if no one will voluntarily accept service as a representative of the Islanders for a Smaller School for the lawsuit by next Tuesday, March 13, 2012, then this Council would withdraw the lawsuit for a declaratory judgment and terminate legal proceedings.

Motion was made by Councilman O'Neil, seconded by Councilwoman Watson, to amend the motion to change the deadline to the close of business by this Friday, March 9, 2012 with notification provided in writing to the Town Administrator, Andy Benke, carried unanimously.

The motion, as amended, reads: if no one will voluntarily accept service as a representative of the Islanders for a Smaller School for the lawsuit by close of business this Friday, March 9, 2012 with notification provided in writing to the Town Administrator, Andy Benke, then this Council would withdraw the lawsuit for a declaratory judgment and terminate legal proceedings, carried unanimously.

Motion was made by Councilwoman Watson, seconded by Councilman Kaynard, to adjourn at 9:10 p.m., carried unanimously.

Respectfully submitted,

Ellen Miller

Ellen Miller

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

TOWN OF SULLIVANS ISLAND,)
Plaintiff(s))

vs.)

ISLANDERS FOR A SMALLER SCHOOL, et al.,)
Defendant(s))

CIVIL ACTION COVERSHEET

2012-CP - 10- _____

2012 CP 10 1060

(Please Print)
Submitted By: G. Trenholm Walker
Address: Pratt-Thomas Walker, P.A.
PO Drawer 22247
Charleston, SC 29413-2247

SC Bar #: 5777
Telephone #: 843-727-2208
Fax #: 843-727-2231
Other:
E-mail: gtw@p-tw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

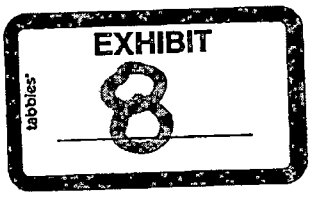
Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)



Submitting Party Signature: G. Trenholm Walker **Date:** February 13, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TOWN OF SULLIVAN'S ISLAND,)
Plaintiff,)
)
v.)
)
ISLANDERS FOR A)
SMALLER SCHOOL, and)
CHARLESTON COUNTY)
SCHOOL DISTRICT,)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-10-

2012 CP 10 1060

SUMMONS
(DECLARATORY JUDGMENT)
(NONJURY)

FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

PRATT-THOMAS WALKER, P.A.

BY: G. Trenholm Walker

G. Trenholm Walker
W. Andrew Gowder, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
T: 843.727.2208
F: 843.727.2231
gtw@p-tw.com
wag@p-tw.com

ATTORNEYS FOR PLAINTIFF
TOWN OF SULLIVAN'S ISLAND

February 13, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-_____
TOWN OF SULLIVAN'S ISLAND,) Plaintiff,)) v.)) ISLANDERS FOR A) SMALLER SCHOOL, and) CHARLESTON COUNTY) SCHOOL DISTRICT,) Defendants.))	2012 CP 10 1060 ***COMPLAINT*** ***(DECLARATORY JUDGMENT)*** ***(NONJURY)***

FILED
FEB 13 2012
CLERK OF COURT

The Town of Sullivan's Island, South Carolina, through its counsel, Pratt-Thomas Walker, P.A., states its complaint as follows:

THE NATURE OF THE CASE

1. This is an action brought by the Town of Sullivan's Island for a declaratory judgment by the court declaring that a petition submitted by the Defendant Islanders for a Smaller School is facially defective; that the Town has no legal obligation under the laws of the State of South Carolina to act on the petition or submit it or its proposed ordinance to the voters in a referendum; that the lease described below has been duly entered and its terms cannot be altered by the proposed referendum and ordinance; and that the only design review of CCSD's building plans for the new school are those set forth in the terms of the lease.
2. This action is brought pursuant to Section 15-53-10, et seq., of the South Carolina Code of Laws, 1976, as amended, known as the "Uniform Declaratory Judgments Act."

PARTIES

3. The Plaintiff, Town of Sullivan's Island (the "Town"), is a municipal corporation organized and existing under the laws of the State of South Carolina.

4. The Defendant Charleston County School District ("CCSD") is a body politic and corporate as established under the laws of the State of South Carolina.

5. The Defendant Islanders for a Smaller School ("ISS") is an unincorporated association of individuals who, upon information and belief, are organized and existing for the purpose of taking coordinated action in the public domain advancing their common agenda for the construction of a small school on the leased site described below, including conceiving, drafting, and circulating for execution that certain petition attached and incorporated as part of this complaint as Exhibit A. This association of individual citizens of the Town of Sullivan's Island has legal capacity to be sued under §15-5-160 of the South Carolina Code of Laws, 1976, as amended.

JURISDICTION AND VENUE

6. This court has jurisdiction of the subject matter of this complaint and of the parties. Venue is proper.

FACTS

7. The Town is the owner of certain real property within its municipal boundaries which has for many years been the site of the Sullivan's Island Elementary School (the "Elementary School"), a public school operated and administered by CCSD.

8. CCSD has, for over 50 years, operated the Elementary School under a 99-year real estate lease. The original lease entered in 1954 was between the State of South Carolina and the CCSD. This lease was assumed by the Town of Sullivan's Island upon its incorporation. CCSD pays nominal rent to the Town under the original lease, but is solely responsible for all costs related to the operation and maintenance of the Elementary School. At the time of the renegotiation of the lease, described herein, 41 years remained on that lease.

9. Because of concerns about the existing building's age, size, and structural integrity, including that it does not meet earthquake standards or current state space requirements, CCSD has expressed its intent to demolish the existing school building on the site and to build a new facility in the same location to house the new Elementary School that will be in compliance with all current building standards and in compliance with current mandatory design criteria for elementary schools.

10. In the summer of 2011, prior to beginning any work on the site, CCSD and the Town negotiated a new lease for 5.61 acres of the site, which, among other things, has a term of 75 years.

11. The lease was adopted by action of the CCSD Board of Trustees on or about August 15, 2011. The lease is attached and incorporated as part of this complaint as Exhibit B.

12. The lease anticipates the construction of a new school on the site of the existing school and the oversight by the Town government of that process:

a. CCSD is responsible for all construction and improvements, and the improvements shall be built in accordance with the laws, ordinances and building codes for the Town of Sullivan's Island, the County of Charleston, and the State of South Carolina. Paragraph 6.

b. No new structures or improvements to the school property may be made without the prior written consent of the Town. The new structures and improvements must be made to achieve compatibility with existing buildings located nearby as set out in Section 21-111 of the Town's ordinances. The CCSD agreed to design the new school with input from Council with the understanding that no construction could begin until plans had been approved by Council. The CCSD and Town agreed to create procedures for the Town, its agents and boards to review the design in phases and to review the construction pursuant to the design and specifications. Paragraph 10.

c. CCSD agreed to submit all plans and designs for the new school to the Town for approval, in stages. Conceptual design submissions, within stipulated parameters for area, building coverage ratio, and height would include height, square footage, footprint, setbacks, elevations, location of HVAC and mechanical units, dumpster locations, significant exterior elements, massing, and exterior façade relief designs. The timetable for submissions is set out in two phases and includes a schedule of three community meetings for the public. Paragraphs 11-12.

d. CCSD agreed to apply for a demolition permit from the Town, observe the Town's Historic Preservation Overlay District, and at all times remain responsible for any and all damages incurred by neighboring and adjacent properties. Paragraphs 14, 16 & 17.

e. CCSD agreed to pay an impact fee of $175,000 to the Town and submit to the full zoning powers of the Town. Paragraphs 22, 30 & 31.

13. The lease was presented to the elected Council for the Town at its regular meeting on August 16, 2011, for first reading. The lease was presented at successive, regularly noticed Council meetings for second reading on September 12, 2011, and the third and final reading at which it was approved on September 20, 2011. The lease was ratified at the meeting of Council on October 18, 2011, by adoption of Ordinance No. 2011-05. The Ordinance is attached and incorporated as part of this complaint as Exhibit C. All meetings were subject to notice as provided by South Carolina law and were well attended and followed by the public, by the Town's citizens, and in particular by Defendant ISS.

14. The lease for the Elementary School site was executed by both the Town and CCSD on or about October 18, 2011.

15. In or about September 2011, ISS conceived of, drafted, and circulated for signature a document entitled "A Petition to Reconsider the Construction of the Sullivan's Island Elementary School, as Currently Proposed (22 September 2011)." (The "Petition")(Exhibit A).

16. The signed Petition was delivered to the Town on October 10, 2011.

17. The cover page for the Petition states that it purports to act under the provisions of South Carolina's initiative and referendum statute, S.C. Code Ann. §5-17-10 (1976 & Supp. 1998) and states as follows:

> Pursuant to S.C. Code Ann. §5-17-10, we the undersigned as registered voters of Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope and type for our historic and environmentally sensitive residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island Elementary School As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in or about the present location of the SIES. (emphasis original).

18. The Petition stated as its goal to gather the required number of signatures for the submittal of this ordinance to Council. It also stated: "Pursuant to S.C. Code Ann. §5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it (sic) final vote thereon." (emphasis original).

19. The proposed ordinance subject to the Petition states in its "Findings" that it seeks to dictate process within the existing land use ordinances: "As the local government, the Town has a long history of adopting and enforcing appropriate land use controls and cooperating with other governmental authorities." Proposed ordinance, Section 1-4(d).

20. The proposed ordinance provides two alternative provisions.

21. The first alternative states that the Town must comply with established design guidelines for neighborhood compatibility as stated in the Town's ordinances, and the design of the school must be specifically approved by a board or committee with the responsibility for approving design guidelines under Town ordinances. This alternative states that if the Town commits to the CCSD to allow construction before the board or committee has approved the design of the school, the Town must revoke that commitment. Proposed ordinance, Section 1-5(a-b) (first alternative).

22. The second alternative states that the Town shall not enter into an agreement to allow for the construction of a school with more square footage than the previous school. Like the first, it further states that if the Town agrees to the construction of a school with more square footage than the previous school, the Town must revoke that agreement. Proposed ordinance, Section 1-5(a-b) (second alternative).

23. In seeking in the alternative to change the terms of the lease or invalidate the lease, Defendant seeks to adversely affect and invalidate the contracted property interest of CCSD and further to impose on CCSD design review requirements that are outside the lease. CCSD is a necessary party to any judicial determination that affects the terms of or may invalidate its lease.

(FOR A FIRST CAUSE OF ACTION)
(DECLARATORY JUDGMENT)

24. The allegations of paragraphs 1-23 above are incorporated by reference herein.

25. The purpose of a declaratory judgment action is to settle and afford relief from uncertainty and insecurity to a party with respect to that party's rights, status, and other legal relations. S.C. Code Ann. §15-53-130 (1976).

26. A party whose rights, status, or other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, status, or other legal relations thereunder. S.C. Code Ann. §15-53-130 (1976).

27. The Town has standing to obtain a declaration of whether it has a duty under the initiative and referendum statute to submit an invalid ordinance to the electorate and that the initiative and referendum proposed by Defendant cannot be used to change the terms of the lease or revoke the lease with CCSD.

28. The Town seeks to determine the legal viability of the initiated ordinance in advance of action by Council or the ballot, before the Town expends public monies on what could be a useless act.

29. CCSD is currently incurring costs in the design of the school and has obtained a demolition permit; demolition is scheduled to occur within the month. The alternative ordinances proposed by ISS seek to have a significant effect on both the lease and the design and construction of the new Elementary School.

30. Under the law of South Carolina, the Town Council is not required to conduct a referendum in a called public election for consideration of the Petitioners' proposed ordinance under these circumstances.

31. The proposed ordinance seeks to dictate a process for the land use and design approvals that the Town would issue to allow the construction of the new school by the CCSD.

32. The first alternative provision is substantially similar to the design and approval process for the new construction in the Lease and is therefore redundant and moot. Further, since the leased land is not zoned, the zoning ordinances referenced in the Petition do not apply.

33. Planning and zoning regulation as carried out by local governments is by its nature an administrative process.

34. Citizens may not, through petition and referendum, seek to effect planning or zoning regulation.

35. The kind of decision-making implicated in the proposed ordinance's second alternative provision (Section 1-5), in this case the approval of the amount of square footage in the building, is inherently an administrative decision and is inappropriate for regulation by petition and referendum

36. Additionally, to the extent the petition and proposed ordinance seeks to invalidate any provision of the executed, binding lease between the Town and the CCSD, that result would impair the contractual rights of the CCSD and the Town, and would therefore violate the S.C. Constitution and Code of Laws.

37. Finally, the requested relief sought in the petition and proposed ordinance is moot since the Town and CCSD have entered a binding lease.

38. The Town is entitled to a declaratory adjudication the Petition request is not the proper subject of a petition under South Carolina law, that the Petition does not

satisfy the requirements of S.C. Code Ann. §5-17-30, that the Town has no legal obligation to take further action with respect to the Petitioner's proposed ordinance, including no obligation to conduct a referendum of the electorate, that the lease is valid and not subject to revocation, alteration, or partial invalidation through referendum and the proposed ordinance, and that the only design review requirements on CCSD for its building plans are those specified in the lease.

WHEREFORE, having fully stated its complaint against the defendants named herein, the Plaintiff Town of Sullivan's Island requests that this court render its judicial determination of the issues presented by this Complaint and render its declaratory judgment in accordance with Paragraph 38 herein, and such further and other relief as is just and proper.

PRATT-THOMAS WALKER, P.A.

BY: G. Trenholm Walker

G. Trenholm Walker
W. Andrew Gowder, Jr.
Post Office Drawer 22247
Charleston, SC 29413-2247
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F: 843.727.2231
gtw@p-tw.com
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ATTORNEYS FOR PLAINTIFF
TOWN OF SULLIVAN'S ISLAND

February 13, 2012

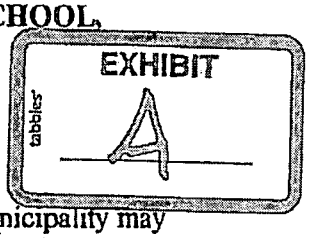
Charleston, South Carolina

(40)

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)



To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

Pursuant to S.C. Code Ann. § 5-17-10, we, the undersigned, as registered voters on Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope, and type for our historic and environmentally sensitive, residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education, and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island elementary School, As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in, or about the present location of the SIES.

This goal of this petition is to gather the required number of signatures for the submittal of this ordinance to the Town Council. Pursuant to S.C. Code Ann. § 5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it final vote thereon.

AGREED UPON BY THE FOLLOWING PEOPLE, who have personally signed this petition, are registered voters of the state of South Carolina and Charleston County, and who have listed their registered voting address after their name.

Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Kathleen Port

Petitioner

Page

6

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	DAVID SDURGIN	10/8/11	2668 JASPER BLVD.
Donna Malony	Donna Molony	10/4/11	2014 IDU AVE
	KELLY MOLONY	10/7/11	2014 Iona Ave
Helen Sloan	Helen Sloan	10/8/11	1505 middle st
	ANDREW SELCER	10/8/11	1807 middle ST.
James Cooper	James Cooper	10/8/11	1808 Middle st
	JOHN HUGHES COOPER	10-8-11	1808 MIDDLE ST.
	CAROL ANTMAN	10-8	1014 AVENUE
	ANN MATHOCLE	10-8	407 ONeil st.
	MICHAEL MATHOCLE	10/8/11	407 ONeil ST ST.
Mary Gress	Mary Gress	10/9/11	2608 Middle St.
	MARK ANTMAN		1014 AVENUE
Helen N. Antman	HELEN N. ANTMAN	10/9/11	1423 MIDDLE ST SOUTH
Peter Coish	Peter G. COISH	10/9/11	1808 Iona Avenue

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	KATHLEEN POST	10/2/11	1907 I'ON AVE.
	WILLIAM POST JR	10/2/11	1907 I'ON AVE.
	F. JUSTINE POST	10/2/11	1907 I'ON AVE.
	CECELIA POST	10/2/11	1907 I'ON AVE.
	Robert B. Vam Sr.	10-7-11	1612 Atlantic Ave.
	FRANCES VARN	10-7-11	1612 Atlantic Ave.
	H. WARING HILLS	10-7-11	1418 THOMPSON AVE.
	W J WOOD JR	10/7/11	1402 Thompson Ave
	E E WOOD	10/7/11	1402 Thompson Ave
	CAROLINE WOOD	10/7/11	1402 Thompson Ave
	EILEEN THURMAN	10/4/11	401 Thompson Ave,
	Lynn DeTyens	10/7/11	3009 Middle St.
	WILLIAM J. WOOD	10/7/11	1454 THOMPSON
	Edith Beckham	10/7/11	1434 Ion Ave, Isle of Palms
	Betty Hagemann	10/7/11	1730 Middle St.
	Michael G. Bean	10/8/11	1738 Middle St.
	Robert P. Thompson	10/8/11	2917 Jon Sq. Dr.
	Lisa Crow	10/8/11	2908 Ion Ave, Sullivans
	Virginia Runyon	10/8/11	2923 ION AVE Sullivans

Page 9

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Susan D. Robertson	Susan D. Robertson	10-7-11	1901 Ion Ave. Sullivan's Island
Edward H Robertson III	EDWARD H. ROBERTSON III	10-7-11	1901 Ion Ave Sullivans Island
Rosemary Thompson	Rosemary Thompson	10-9-11	2917 Ion Ave. Sullivans
Lynnie Harper	Lynnie Harper	10-9-11	1325 Middle St.
SARAH HARPER DIAZ	SARAH HARPER DIAZ	10/9/11	1317 Middle St.
FRANK HARPER	FRANK D. HARPER	10/9/11	1325 MIDDLE ST
Daniel Harper	Daniel Harper	10/9/11	1325 Middle St.

Page 10

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

Pursuant to S.C. Code Ann. § 5-17-10, we, the undersigned, as registered voters on Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope, and type for our historic and environmentally sensitive, residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education, and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island elementary School, As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in, or about the present location of the SIES.

This goal of this petition is to gather the required number of signatures for the submittal of this ordinance to the Town Council. Pursuant to S.C. Code Ann. § 5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it final vote thereon.

AGREED UPON BY THE FOLLOWING PEOPLE, who have personally signed this petition, are registered voters of the state of South Carolina and Charleston County, and who have listed their registered voting address after their name.

Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 04-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA Comm. Exp. 04-16-2020

Petitioner

Page_____

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	E A Scarda III	10/3/11	2102 Atlantic Ave
	Angela M. Graham	10/3/11	2102 B Ion Ave
	J. MARSHALL STITH	10/3/11	45 Station 22 Street
	JESSAMYN JACOBS	10/3/11	415 Station 22 ST
	E I CONDON	10/3/11	2201 ION AVE
	CAROLYN SCARDA	10/3/11	2102 Atlantic
	Robert F Graham Sr	10/3/11	2118 ION AVE
	Anne L. Graham	10/3/11	2118 Ion Ave.
	Nathaniel H. Robb, JR	10/3/11	2209 Atlantic Ave
	JUNE FISCHER	10-3-11	2216 Jonquil Blvd.
	Leo Fetter	10/5/11	2668 Middle St
	J.E. PEARCE	10/5/11	2007 20th St.
	MARTHA Igoe	10/5/11	403 Sta 13 ST
	Roger Igoe	10/5/11	403 Sta 13 ST
	Mary Meehan	10/5/11	411 Sta 13 St
	William G. Meehan	10/5/11	411 Sta. 13rd St.
	MARTHA FUNK	10/5/11	411 Sta. 13 St
~~[illegible]~~	~~1302 Thompson Ave~~	~~10/5/11~~	
	DORIS Lancaster	10-5-11	1302 Thompson Ave
	Robert LANCASTER	10-5-11	1302 Thompson Ave
	Eugene S Blanchard	10-5-11	1305 Thompson Ave.
	June B Blanchard	10-5-11	1305 Thompson Ave
	NICHOLAS MURPHY	10/5/11	1311 Ocean Blvd
	Ann H. Gay	10/5/11	848 Middle St.
	Charles Gay, Jr	10/5/11	"
	RICHARD A GRAHAM	10/5/11	2102 ION AVE
MR Bailey	Mel R Bayley	10/7/11	829 Middle St
BN Bailey	BN Bailey	10/7/11	829 Middle St
	Wallace Rhem	10/7/11	2068 Ion
	MARTINE. C. HIERS	10/7/11	2714 Goldbug Ave St
Mary R. Blanchard	Mary R. Blanchard	10/7/11	2002 Central St
	Thomas E Gaissert	10/7/11	2673 Ion Ave

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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CHARLESTON COUNTY South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Ellen L. Miller Commission Expires 8-12-12

Notary Public Seal:

ELLEN L. MILLER COM. EXP. NOTARY PUBLIC 08-12-2012 SOUTH CAROLINA

John A. Rehner
PETIONER

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SIGNATURE	PRINTED NAME	DATE	ADDRESS
John A. Jeffries	JOHN A. JEFFRIES	10/5/11	1615 Poe Ave
Jenn E. Jeffries	JENN E. JEFFRIES	10/5/11	1615 Poe Ave
[illegible]	[illegible]	10/5/11	
P.R. Ebel	P.R. EBEL	10/5/11	1620 Poe, Ave
Ann W. Ebel	ANN W. EBEL	10/6/11	1620 Poe Ave
Vicki H. Rudd	Vicki H. Rudd	10/7/11	1617 Middle Street
Howard F. Rudd, Jr.	Howard F. Rudd, Jr.	10/7/11	1617 Middle Street
David Bloom	DAVID BLOOM	10/9/11	1658 Atlantic Ave
Sonja Bloom	SONJA BLOOM	10/9/11	1658 Atlantic Ave
Lori Lyles	Lori Lyles	10/9/11	1651 Atlantic Ave.
Delores A. Schweitzer	Delores A. Schweitzer	10/9/11	1612 Poe Avenue
[illegible]	[illegible]	10/9/11	1750 Fenn Ave.
Wiggie Bitter	Wiggie Bitter	10/9/11	1750 Fenn Ave
Mike McEvoy	MIKE MC EVOY	10-9	2301 Monroe Ave.
Dean Varner	Dean Varner	10-9	2262 Myrtle Ave.
Alexandria D. Varner	Alexandria D. Varner	10-9	2262 Myrtle Ave.

(91)

A PETITION TO RECONSIDER THE

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal: KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

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Petitioner: Susan Poulnot

SIGNATURE	PRINTED NAME	DATE	ADDRESS
	Lodene R Adams	10/5/2011	210 Store 28½
	Courtney Adams	10/5/2011	" "
	KEITH MAXEY	10/5/2011	210 Store 28½
	Michal Baird	10/5/2011	308 St. 9½
	Jim Brown	10/6/11	308 ST. 9½
	Tambra Darby	10/6/11	933 Middle Str
	JEREMIAH CALHOUN	10/6/11	1655 MIDDLE ST
	Anne Parker	10/6/11	14702 JON AVE
	W. Scott Parker	10/6/11	1702 Jon
	Patrick K. Rutledge	10/6/11	1764 Atlantic
	Rochelle Rutledge	10/6/11	1764 ATL. AVE
	Richard K Spelman	10/5/11	2502 MIDDLE ST
	Francis G. Johnson	10/5/11	2402 GOLDBUG AVE
	Dicksie G Johnson	10/6/11	2402 Goldbug Ave
	Tammi Spelman	10/7/11	2502 Middle St
	Elizabeth Gregorie	10/7/11	2838 Harvey St
	Dee Schutte	10-7-11	2926 Jasper
	Linda C. Schutte	10/7/11	2926 Jasper Blvd
	Sherry Coish	10/8/11	2808 Jon Ave
	RON COISH	10/8/11	2808 JON AVE.
	Angelyn S. Avinger	10/9/11	2807 Marshall Blvd

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

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Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Karen Coste	Karen Coste	9.30.11	322 Station 19, 51
Charlotte Collias	Charlotte Collias	9-30-11	1908 Ion Ave
	Hal Coste	9/30/11	322 Sta. 19
Judy P. Nelson	JUDY P. NELSON	9/30/11	321 Sta 19
James E. Nelson	JAMES E. NELSON	9/30/11	321 STA. 19.
Clyde M. deBruce	Clyde M. deBruce	10/2/11	1903 Back St.
Sumter Tyde Bruce	Sumter F. deBruce	10/2/11	1903 Back St
James B. Nelson	James B. Nelson	10/2/11	321 Station 19
Bonnie A. Williams	Bonnie A. Williams	10/3/11	2513 Ion Avenue
Roy Williams	ROY WILLIAMS	10/3/11	2513 Ion Avenue
E.P. Chiola	E.P. CHIOLA	10/3/11	1616 Pine Ave
Eugene J West	Eugene J West	10/3/11	1714 Middle St
Lindac West	LINDAC WEST	10/03/11	1714 MIDDLE ST.
Milton Langley	MILTON LANGLEY	10/3/11	1618 Middle St.
Framie Reese	Framie Reese	10/3/11	305 Station 20
Raye Ann M. Osborne	Raye Ann M. Osborne	10/3/11	1801 ATLANTIC AVE.
Helen Pearlman	Helen Pearlman	10/3/11	3040 Middle St
Caroline S Osborne	Caroline S Osborne	10/3/11	1801 Atlantic Ave
Robert Cookson	Robert Cookson	10-3	2513 Ion Ave
Lynn Rutledge	Lynn Rutledge	10-3	2014 Central Ave
Carter Lupton	Carter Lupton	10-4-11	2829 Marshall Blvd
	Fred Wszolek	10/4/11	3014 Ion Avenue
Carol Killough	Carol Killough	10/4/11	1813 Back Street
Billy K Park	Billy K Park	10/4/11	1813 Back St
Nancy Havens	Nancy Havens	10/4/11	1746 Thompson Ave
Peter Langsam	Peter Langsam	10/4/11	1618 Middle St
Linda Nagle	Linda Nagle	10-5-11	2630 Middle St.
Ethel Fortenberry	ETHEL FORTENBERRY	10-5-11	2408 Myrtle Ave
Joanne Winchester	Joanne Winchester	10-5-11	2720 Brooks ST
John Winchester	John Winchester	10-5-11	2720 Brooks ST
Shirley Jo C Jones	Shirley Jo C Jones	10/5/11	2529 Atlantic Ave
Norwood L. Smoak	Norwood L. Smoak	10/5/11	2607 Bayonne
Josephine H. Hutcheson	Josephine H. Hutcheson	10-5-11	2643 Bayonne St.
Charles Kuetz	CHARLES KUETZ	10/5/11	2820 Marshall Blvd
Sally Greer	SALLY GREER	10/5/11	2808 Atlantic
Thomas R Silver	Thomas R Silver	10/5/11	2830 Atlantic
Vivian Scarborough	Vivian Scarborough	10-5-11	2830 Atlantic

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Amanda Jacob	Amanda Jacob	10/5/11	7684 Ion. Ave.
Ann C. Fuller	Ann C. Fuller	10/5	1 2814 Atlantic Ave.
William Fuller	William F. Fuller	10/15	11 "
Sheila Kuritz	Sheila Kuritz	10/5/11	2678 Jasper Blvd
Barbara Flaherty	BARBARA Flaherty	10/6/11	2208 Atlantic Ave.
Stephanie Aston-Jones	Stephanie Aston-Jones	10/6/11	2624 Ion Ave.
Michael C Ralston	MICHAEL C RALSTON	10/6/11	2629 Ion ave
Helen Roderick	Helen Roderick	10/6/11	2723 Bayonne St.
Kat Kenyon	Kat Kenyon	10/6/11	2804 Marshall
Joseph Wegwich	JOSEPH WEGWICH	10-6-11	3024 Marshall
Eloise Bradham	Eloise Bradham	10/6/11	3109 Ion Ave
Gabe R. Visser	GABE R. VISSER	10/6/11	2824 Middle St
Dr. Elizabeth Bjarson	Dr. Elizabeth Bjarson	10/6/11	2824 Middle St
Margaret Marcinski	MARGARET MARCINSKI	10/6/11	2808 JASPER
James E. Marcinski	JAMES MARCINSKI	"	"
W. Howard Holt	W. HOWARD HOLT	10/7/11	1807 Ion AVE
Nancy C. Geckler	Nancy C. Geckler	10/7/11	1602 Atlantic Ave
Johnny Tate	Johnny Tate	10/07/11	1602 Atlantic Ave.
David T. Spell, Jr	DAVID T. SPELL, JR	10/7/11	1702 Atlantic Ave
John Reitzech	John Reitzech	10/7/11	1602 Poe
Pamella McPortugal	Pamella McPortugal	10/7/11	1602 Poe
Dup. Ellen Thurmon	ELLEN Thurmon	10/7/11	1702 Thompson Ave.
Nancy A. Siepling Fortiere	NANCY A. Siepling FORTIERE	10/8/11	1761 Atlantic Ave
David L. Fortiere	DAVID L. FORTIERE	10/8/11	1061 ATLANTIC AVE
Carroll L. Joyner	Carroll L. Joyner	10/8/11	1118 Middle St
Katharine Crawford	Katharine Crawford	10/8/11	927 Middle St
	JANE SHEAHAN McLAUGHLIN	10/8/11	840 ↓
	RAY McLAUGHLIN	10-8-11	840 ↓
	Michelle Lally	10-8-11	840
Elizabeth Biddle	Elizabeth Biddle	10/8/11	1026 Escalante
Lydia Matthews	Lydia Matthews	10/8/11	405 Seabreeze Ln
Olga Kobrosky	Olga Kobrosky	10/8/11	402 Seabreeze Ln
V A Sonson	V A Sonson	10/8/11	401 Seabreeze Ln
De Daltorio	De Daltorio	10/8/11	401 Seabreeze Ln
Beth McLean	Beth McLean	10/8/11	312 POE AVE
Ephraim Mikell Carroll	EPHRAIM MIKELL CARROLL	10/8/11	1308 Cove Avenue
Elizabeth Carroll	ELIZABETH CARROLL	10/8/11	1308 Cove Avenue

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Arthur Smith	Arthur Smith	10-8-11	2803 Marshall Blvd
Julia Smith	Julia Smith	10-8-11	2803 Marshall Blvd
Dan Legare	Dan Legare	10/8/11	3104 Marshall Blvd
Gloria Legare	Gloria Legare	10/8/11	3104 Marshall Blvd
Louis Juhasz	Louis Juhasz	10/8/11	3014 Don Ave.
[illegible]	[illegible]	10/08/11	2735 Tasker
Helen Spell	Helen Spell	10/10/11	1712 Atlantic Ave
Jane R Galis	Jane R Galis	10/10/11	1817 Back St.
[illegible]	Constantine "Chuck" Galis	10/10/11	1817 Back St.

SIGNATURE	PRINTED NAME	DATE	ADDRESS
[redacted]			
C Richardson	C RICHARDSON	10/10/11	2820 JASPER BLVD
C Richardson	C RICHARDSON	10/10/11	2820 JASPER BLVD

A PETITION TO RECONSIDER THE

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Signature of Notary Katherine A Kenyon Commission Expires 2-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Petitioner Stephanie Smith

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Stephanie Smith	Stephanie Smith	10/3/11	1908 Thee St.
Fleming Harris	Fleming Harris	10/3/11	2901 Ion Ave
Kathleen Harris	Kathleen Harris	10/3/11	2901 Ion Ave.
Lynne Hamontree	Lynne Hamontree	10/3/11	2871 Ion Ave
	Steven E Hamontree	10-3-11	2871 Ion Ave
Cynthia S Bowen	Cynthia S Bowen	10/3/11	2862 Ion Ave
Summer Coish	Summer Coish	10/3/11	2808 Ion Ave.
Kelly Messier	Kelly Messier	10/3/11	2770 Ion Ave.
Joe Botts	Joe Botts	10/3/11	2724 Ion Ave
Lorin Botts	Lorin Botts	10/3/11	2724 Ion Ave.
Alice Botts	ALICE BOTTS	10/3/11	2724 Ion Ave
Ferdinand Gregorie III	Ferdinand Gregorie III	10/3/11	410 Patriot St.
	Millie O'Shaughnessy	10/3/11	901 Middle St
Susan Poulnot	Susan Poulnot	10/3/2011	2819 Marshall Blvd
David Poulnot	David Poulnot	10/3/2011	2819 Marshall Blvd
Martha B Gunter	Martha B Gunter	10/3/2011	2813 Marshall Blvd.
Barbara S Robinson	Barbara S Robinson	10/3/2011	2108 Pettigrew St
Leslie Robinson	LESLIE ROBINSON	10/3/11	2108 Pettigrew St
David Dellinger	DAVID DELLINGER	10/3/11	2350 JASPER BLVD.
Deborah Gregorie	Deborah G Gregorie	10/3/11	410 Patriot St.
Gay Coleman	Gay Coleman	10/4/11	1856 Thee St.
Stewart Coleman	Stewart Coleman	10/4/11	1856 Thee St.
Judith C Reese	Judith C. Reese	10/4/11	2209 Myrtle Ave.
Juanita T Byrum	JUANITA T. Byrum	10/4/11	2018 Middle St
Nancy J McConnell	NANCY J McCONNELL	10/4/11	3025 JASPER BLVD
Kay Park	KAY PARK	10/4/11	196 Ion Ave
Helen C Smith	Helen C Smith	10/4/11	2250 Atlantic Ave.
Teri B England	Teri B. England	10/4/11	2014 Middle St
Patricia C Ilderton	Patricia C Ilderton	10/4/11	2507 Atlantic
Chery Ilderton	Chery S. Ilderton	10/4/11	2507 Atlantic
	Sarah Mae Ilderton	10/4/11	2507 Atlantic
Eleanor P Daly	Eleanor P Daly	10/4/11	2408 Raven Drive
Michael F Daly	Michael F Daly	10/4/11	2408 Raven Drive
Gina Schirmer	Gina Schirmer	10/4/11	1857 Flag St.
Sam Schirmer	SAM Schirmer	10/4/11	1857 Flag St
Louise Rossell	Louise Rossell	10/4/11	2007 Middle St.
~~Lynn Bolyens~~	~~Lynn Bolyens~~	~~10/5/11~~	~~3001 Myrtle Street~~

Dup

SIGNATURE	PRINTED NAME	DATE	ADDRESS
~~W T Wood Jr~~	~~W T Wood Jr~~	~~10/5/11~~	~~1410 Thompson~~
Dup ~~C E C Woods~~	~~C E C Woods~~	~~10/5/11~~	~~1410 Thompson~~
Dup ~~Catherine Wood~~	~~Catherine Wood~~	~~10/5/11~~	~~1402 Thompson~~
Dup ~~William T Wood Jr~~	~~William T Wood Jr~~	~~10/5/11~~	~~1410 Thompson Ave~~
Agetha Thomas	Agetha Thomas	10/5/11	1220 Cove
George A. DeLyons	George A. DeLyons	10/5/11	3009 Middle Street
Betty Driemeyer	Betty Driemeyer	10/5/11	2902 I'On Ave
Judy Bowers	Judy Bowers	10/5/11	3209 Middle St
Peggy Hagood	Peggy Hagood	10/5/11	2424 Raven Dr.
Timothy K Jenkins	Timothy K Jenkins	10/6/11	2530 Jasper Blvd.
Carolyn G. McGlynn	Carolyn G. McGlynn	10/6/11	2510 Jasper Blvd
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
F. Daniel Batten IV	F. DANIEL BATTEN IV	10/6/11	2430 ATLANTIC
Susan G. Batten	SUSAN G BATTEN	10/6/11	2430 ATLANTIC
[illegible]	[illegible]	10/6/11	2864 BRUNEL
[illegible]	Elizabeth Haskin	10/6/11	2864 Brownell Ave
Joseph M. Dunn	Joseph M Dunn	10/7/11	1401 Middle ST
Patricia Patella	PATRICIA PATELLA	10/7/11	2832 Middle St.
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]
Judith K Veronen	Judith K Veronen	10/7/11	2507 Raven Dr.
[illegible]	John Holzworth	10/7/11	2507 Raven
[illegible]	LENDRUM BRANCH	10/7/11	2432 Jasper Blvd
Sandra Branch	Sandra Branch	10/7/11	2430 Jasper Blvd
Clyde Timmons	Clyde Timmons	10/7/11	1413 Middle St
Carlin W. Timmons	Carlin Timmons	10/7/11	1413 Middle St
Jean Kablick	Jean Kablick	10/8/11	1850 I'On Ave.
[illegible]	GEORGE KABLICK	10/8/11	1850 I'On Ave
[illegible]	THOMAS SOMERS	10/8/11	2520 Myrtle Ave
Courtney Somers	Courtney Somers	10/8/11	2540 Myrtle Ave
[illegible]	[illegible]	10/8/11	2609 Atlantic Ave
[illegible]	Gloria Howard	10/10/11	1820 Central Ave
Sandra R Tawes	SANDRA R TAWES	10/10/11	2608 ATLANTIC AVE
George W. Tawes	GEORGE W. TAWES	10/10/11	2608 ATLANTIC AVE
[illegible]	HAROLD C. ENLOE	10/10/11	2220 I'On

A PETITION TO RECONSIDER THE

CONSTRUCTION OF THE SULLIVANS ISLAND ELEMENTARY SCHOOL,

AS CURRENTLY PROPOSED (22 SEPTEMBER 2011)

To: Sullivan's Island Town Council (Town Council)

S.C. Code Ann. § 5-17-10 (1976 & Supp. 1998) states that "the electors of a municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the municipality equal in number to at least fifteen percent of the registered voters at the last regular municipal election and certified by the municipal election commission as being in accordance with the provisions of this section."

Pursuant to S.C. Code Ann. § 5-17-10, we, the undersigned, as registered voters on Sullivan's Island, do hereby request that no further action be taken by the Town Council on the proposed construction for the Sullivan's Island Elementary School (SIES), pending serious and heretofore unexecuted, public evaluation of the most recently proposed construction plan. We, the undersigned, emphatically support the rebuilding of a new public school, but hold that this new school must be one of a more appropriate size, scope, and type for our historic and environmentally sensitive, residential community. Further, all of Sullivan's Island's residents deserve an opportunity to be heard on this issue regarding public monies, education, and impacts, with full transparency. Therefore, we hereby request that the Town Council adopt an ordinance (attached) entitled "Reconsideration of the Construction of the Sullivan's Island elementary School, As Currently Proposed." This ordinance seeks full and complete, public evaluation of the currently proposed construction at, in, or about the present location of the SIES.

This goal of this petition is to gather the required number of signatures for the submittal of this ordinance to the Town Council. Pursuant to S.C. Code Ann. § 5-17-30 (1976 & Supp. 1998), if the ordinance is not passed by the Town Council, or is passed with substantial modifications, we request a public referendum, or special election, on the proposed ordinance no less than 60 days from the date the council takes it final vote thereon.

AGREED UPON BY THE FOLLOWING PEOPLE, who have personally signed this petition, are registered voters of the state of South Carolina and Charleston County, and who have listed their registered voting address after their name.

Charleston County South Carolina registered voters and residents of Sullivan's Island, do hereby sign and SUBMIT this petition, and each submitter signed his/her name thereto in my presence: I believe each has stated his/her name and registered voting address correctly, and that each signer is a registered voter in the state of South Carolina and Charleston County. Subscribed and sworn to before me this the 10 day of October, A.D. 2011.

Signature of Notary: Katherine A Kenyon Commission Expires 4-16-2020

Notary Public Seal:

KATHERINE A KENYON NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 04-16-2020

Martha J. Smith

Petitioner

SIGNATURE	PRINTED NAME	DATE	ADDRESS
[illegible]	ELLISON SMITH IV	10/8/11	1908 Flag St.
Martha J. Smith	MARTHA J. SMITH	10/8/11	1908 Flag St.
Marilyn Goldstein	MARILYN GOLDSTEIN	10/8/11	194 STATION 19
[illegible]	HERB GOLDSTEIN	10/8/11	194 STATION 19
[illegible]	ROBERT FAVA	10/8/11	2824 MAPLE
Barbara P. Spell	Barbara P. Spell	10/8/11	1702 Atlantic Ave
[illegible]	Jennifer Angelino	10-9-11	2851 Middle St
[illegible]	MARK ANGELINO	10-9-11	2851 MIDDLE ST.
[illegible]	Robert B. Pearlman	10-9-11	3010 Middle St.
Cynthia Pearlman	Cynthia Pearlman	10-9-11	3010 Middle St
Martha DeLuca	Martha DeLuca	10-9-11	2856 Middle St.
[illegible]	Christine Richard	10/9/11	2820 Jasper
Diane R. Cartledge	Diane R. Cartledge	10/9/11	2696 Jasper
[illegible]	JEANNE SMITH	10/9/11	1719 ATLANTIC
J. Addison Ingle	J. Addison Ingle	10/9/11	1719 Atlantic Ave

SIGNATURE	PRINTED NAME	DATE	ADDRESS
Caroline Messier	Caroline Messier	10/4.11	2730 Ion Ave.
	Jeffrey Simon	10.4.11	2730 Ion Ave
	ADAM SIMON	10.4.11	2730 Ion Ave
	Steven Messier	10/9/11	2730 Ion Ave

ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

TOWN OF SULLIVAN'S ISLAND
COUNTY OF CHARLESTON, SOUTH CAROLINA

ORDINANCE NO._____

Adopted, _____ Day of _____ 2011
Effective, _____ Day of _____ 2011

SECTION 1-1: SHORT TITLE

This ordinance shall be known as: ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

SECTION 1-2: PURPOSE

1) TO PROVIDE THE PUBLIC WITH AN OPPORTUNITY TO HEAR, EVALUATE, CONSIDER, AND COMMENT UPON THE CURRENTLY PROPOSED CONSTRUCTION PLAN OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL;
2) TO MANDATE THE COLLECTION OF PUBLIC COMMENTS IN AN OPEN FORUM;
3) TO FOSTER COMPLIANCE WITH STATE AND FEDERAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
4) TO FOSTER COMPLIANCE WITH LOCAL REGULATIONS REGARDING POTENTIAL PROJECT IMPACTS;
5) AND FOR OTHER PURPOSES, AS ALLOWED BY LAW.

SECTION 1-3: ENACTING CLAUSES

WHEREAS, S.C. Code Ann. § 5-17-10 and § 5-17-30 (1976 & Supp. 1998) provides procedures for concerned citizens to introduce local ordinances, and request a referendum on said ordinances, in matters such as the construction of a public elementary school;

WHEREAS, it has been determined that any proposed school on Sullivan's Island should comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island (Article XII, Design Review Board, Section 21-111);

WHEREAS, the impact of the proposed school building project has not been fully evaluated, including, but not limited, to specific concerns regarding, water, sewage, traffic/parking, environmental and storm-water drainage issues;

WHEREAS, the registered voters of Sullivan's Island have not been fully informed of the results of previous evaluations;

WHEREAS, Sullivan's Island residents desire full due process and crave an opportunity for input at a public hearing, and said residents further desire to be heard in full transparency on this issue regarding public monies and public education;

WHEREAS, the magnitude of the currently proposed project poses numerous, potential, impacts to the historic and environmentally sensitive residential community of Sullivan's Island;

WHEREAS, the sponsors of this ordinance emphatically support the rebuilding of a public school at SIES, they also hold that this new school must be one of a more appropriate size, scope, and type for a historic and environmentally sensitive residential community;

WHEREAS, the afore-said project impacts are regulated by a myriad set of local, state, and federal laws which must be addressed in the public interest;

WHEREAS, all local ordinances on Sullivan's Island are deliberated and approved by the Town Council in a multi-step process with a first reading, a second reading, a third reading, and a final ratification at a regular Town Council Meeting;

WHEREAS, the duly elected governing authority of Sullivan's Island is the Sullivan's Island Town Council and the Mayor thereof;

WHEREAS, the Sullivan's Island Town Council provides approval for the construction of the Sullivan's Island Elementary School by virtue of being the duly elected governing authority;

NOW THEREORE, be it ordained that the Sullivan's Island Town Council adopts the following ordinance, with the following provisions:

Section 1-4: GENERAL PROVISIONS

Section 1-4(1) (a-i). Definitions.

For purposes of this Ordinance, the following definitions apply:

(a) 'School' means Sullivan's Island Elementary School, or SIES;
(b) 'County' means the County of Charleston;
(c) 'Council' means Sullivan's Island Town Council;
(d) 'Person' means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association;
(e) 'Town' and 'Island' means Sullivan's Island;
(f) 'State' means the state of South Carolina;
(g) 'Federal' means United States;

(h) 'Public interest' refers to the beneficial and adverse impacts and effects of a project upon members of the general public;
(i) 'The public,' 'citizens,' or 'residents' refers to registered voters/residents of Charleston County.

Section 1-4 (a-f). Findings.

(a) This ordinance shall be liberally construed and applied to promote its underlying purposes and policies.
(b) If any provision of this ordinance, or the application thereof, is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.
(c) The intent of this ordinance is to enable the Town of Sullivan's Island, acting individually or in concert, to continue to preserve and enhance its present advantages, and to prevent or minimize such future problems as may be foreseen, specifically in regard to the construction of the SIES, as currently proposed.
(d) As the local government, the Town has a long history of adopting and enforcing appropriate land use controls, and cooperating with other governmental authorities.
(e) The provisions of this ordinance are declared to be necessary for the promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare of the residents of Sullivan's Island.
(f) The preamble to this ordinance is hereby incorporated into this ordinance as if set out fully herein.

Section 1-5 (a-b): PROVISIONS

(a) Any school built or rebuilt on Sullivan's Island must comply with established design guidelines for neighborhood compatibility, as stated in the adopted public ordinances of the Town of Sullivan's Island and must specifically be approved by the board or committee that has responsibility for approving design guidelines. (Article XII, Design Review Board, Section 21-111);
(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island before the board or committee has approved the design of the school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

ALTERNATIVE

Section 1-5 (a-b): PROVISIONS

(a) The Town of Sullivan's Island shall not enter into any agreement or make any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school.

(b) If the Town of Sullivan's Island enters into any agreement or makes any commitment to allow for the construction of a school at Sullivan's Island with more square footage than the previous school, the Town of Sullivan's Island shall take action to revoke such agreement or commitment.

Section 1-6: ORDINANCE ADOPTION

The Ordinance Book of Sullivan's Island in the County of Charleston is hereby amended by adopting on the ____ day of _____, 2011 this Ordinance, to be numbered _____.

This Ordinance shall be known as the ORDINANCE FOR THE RECONSIDERATION OF THE CONSTRUCTION OF THE SULLIVAN'S ISLAND ELEMENTARY SCHOOL, AS CURRENTLY PROPOSED.

The effective date of this ordinance is the _____ day of _____, 2011.

SO ORDAINED by the Town Council of Sullivan's Island, this day.

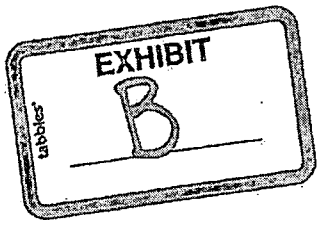
ATTEST:

By _____
Clerk to the Town Council

Mayor _____

Sullivan's Island, Charleston County

4



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LEASE AGREEMENT

This Lease Agreement is made and entered into as of this 18th day of October, 2011 by and between the Town of Sullivan's Island (hereinafter referred to as "Landlord") and the Charleston County School District (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the owner of the below-described property and firmly believes it is in the best interests of the Town of Sullivan's Island to have the Elementary School located and operating thereon, and desires to cooperate with the Tenant in having a new school built on the below-described property; and

WHEREAS, the use of said premises for a public elementary school is a material obligation of the Tenant under this lease agreement. The Tenant shall complete the design and construction of the school as soon as possible, using its best efforts, due diligence and any and all means available to expedite the completion of said facility. The Landlord and Tenant agree to expedite their obligations hereunder to complete the school for use and occupation by January 2014; and

WHEREAS, Tenant presently is leasing the below-described property pursuant to an Agreement entered into with the State of South Carolina and School District Number 2 of Charleston County, which expires in approximately forty (40) years; and

WHEREAS, Tenant desires to control the property for a longer term and desires to terminate it's existing lease and enter into this lease for a term of seventy-five (75) years; and

NOW, THEREFORE, in consideration of the terms and conditions of the within lease and the mutual promises and covenants herein contained and further in consideration of the sum

of Ten and No/100 ($10.00) Dollars, and other value consideration paid by Tenant, receipt whereof, which is acknowledged, Landlord does hereby lease and let to lease, and Tenant hereby takes and hires from Landlord upon and subject to the terms, conditions and provisions of this lease, the premises hereinafter described, together with all of the improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, for the term and upon the conditions of this lease as hereinafter provided.

1. PROPERTY LEASED. All that real property located within the Town of Sullivan's Island encompassing approximately 5.61 acres, butting and bounding on the North by the seaward boundary of Battery Gadsden and Battery Thompson. The South line, or seaward line, would be generally an east-west line along the remnants of the Old Rock Jetty. The West line would be located approximately seventy (70') feet east of the existing leased property line, and the East line shall be approximately seventy (70') feet west of the existing east leased property line. The legal description is shown more fully and described on Exhibit "A," being the area between points designated as "A", "B", "C" and "D", which is attached hereto and incorporated herein by reference (the Leased Property). Landlord will provide non-exclusive easements of access and egress by any and all pedestrian and vehicular means, including construction vehicles and equipment of all types, from I'on Avenue and Atlantic Avenues to the Leased Property for the term of this lease. For the term of this lease, Landlord will also provide non-exclusive easements of pedestrian access and egress to, from and between the Leased Property and the beach over the existing beach path as is reflected on Exhibit "A" to this lease.

2. TERM. The term of this Lease shall be for a period of seventy-five (75) years commencing on the 1ST day of July, 2011 and ending on the 30th day of June, 2086.

3. RENT. Tenant agrees to pay rent hereunder to Landlord payable in advance upon the signing of this Lease in the amount of Ten and No/100 ($10.00) Dollars.

4. USE OF THE LEASED PROPERTY. The Leased Property and all of the improvements located thereon, or to be located, shall be used by the Tenant only as an Elementary School children of the Town, and the surrounding areas within the Charleston County School District, and for such other related purposes necessary for the operation of the Elementary School and the education of the children.

5. REVERSION. The lease premises shall revert to the possession and control of the Landlord at the end of the lease term, or upon the breach of any provision herein or any default by the Tenant. No notice shall be required for such reversion to occur; provided, however, Landlord may permit the Tenant an opportunity to cure any such default within a period of no longer than thirty (30) days from the occurrence of said breach or default.

Once the elementary school is completed and available for use as a public elementary school, any abandonment of that continuous use and purpose by the Tenant shall be a default and breach of this lease agreement. In such circumstances, the premises shall revert to the Landlord and the lease terminates.

Failure of the Tenant to maintain continuous use of the new school as a public elementary school for a period of twenty-four (24) months shall constitute abandonment of the lease and the premises. In the event that such abandonment occurs, then, in that event, the Landlord may terminate the lease, enter the premises, take control of the premises and use the premises for its purposes or lease said premises without encumbrance from the terminated lease herein. Any personal property remaining in the Leased Property at the expiration of the lease period shall be

deemed abandoned by the Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefore.

6. CONDITION AND MAINTENANCE OF THE LEASED PROPERTY. The Tenant accepts the property in its present condition. Landlord makes no representations or warranties, either expressed or implied, regarding the condition of the Leased Property, or its fitness for any purpose. Tenant agrees to at all times during the term of this Lease, be responsible, for the construction of all improvements and for any and all repairs, maintenance and replacements, ordinary and extraordinary, along with all infrastructure necessary to provide any and all utilities to the property. All such improvements shall be built in accordance with the laws, ordinances and building codes of the Town of Sullivan's Island, the County of Charleston, and the State of South Carolina.

7. TAXES AND INSURANCE. Tenant agrees to be responsible for all taxes, if any, and all insurance required on the premises.

8. UTILITIES. Tenant agrees to be responsible for providing and bringing all utilities to the property, and for paying all utilities on the Leased Property.

9. ASSIGNMENT OR SUBLEASE. Tenant shall not have the right to assign or sublet the Leased Property to any other entity. Tenant shall not assign, transfer, mortgage or pledge or otherwise encumber or dispose of this Lease, or sublet the premises, or any part thereof, without written approval of the Landlord. If this Lease is sublet, assigned, mortgaged, pledged, or otherwise encumbered or disposed of, or occupied without the Landlord's written permission, this Lease may, at the option of the Landlord, be terminated by a seven (7) day written notice to the Tenant.

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10. IMPROVEMENTS AND ALTERATIONS. Any new structures to be placed on the Leased Property, or any improvements to the Leased Property should not be made without the prior written consent of Landlord. Tenant hereby agrees to build the anticipated new school, taking into consideration the compatibility of the existing buildings located nearby and within the Town, with intentions to achieve neighborhood compatibility. In achieving neighborhood compatibility, the Tenant shall consider the standards of neighborhood compatibility as set out in Section 21-111 of the Town of Sullivan's Island Ordinances.

Tenant agrees to design the new school with input from the Town Council, or their duly appointed agents with the understanding and agreement that no construction shall begin until such plans have been approved by the Town Council. The Landlord and Tenant agree to create procedures for the Town and/or its agents or boards, to review the design in phases, and to review the construction pursuant to the design and specifications.

11. DESIGN APPROVAL PROCESS. Tenant shall submit to the Landlord all plans and designs for the new school to be located on the Leased Property. The approval process shall include the following approval steps:

Conceptual Design Parameters.

The parties agree that the conceptual design parameters for the new school building shall include a maximum of 74,000 square feet of conditioned space as defined by the International Building Code, with a maximum of 34 feet for Building A, with maximum of 48 feet height for two-story building (Building B), if required and justified to Council, with a maximum of 42 feet for multi-purpose building (Building C), and with maximum of 35 feet height for Building D.

12. CONCEPTUAL DESIGN. Submissions by the Tenant shall include height, square footage, footprint, side setbacks, seaward and inland setbacks, elevations, location of exterior

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HVAC and mechanical units, dumpster locations, other significant architectural exterior elements (including decks, porches, protrusions, roof lines), building coverage ratio of 27% percent of the Leased Property (based on first floor heated square footage of 65,600 square feet excluding decks, stairs, ramps, roof overhangs and sun shades), massing, and exterior façade relief designs.

The projected timetables for these submissions to the Landlord for approval are as follows:

1. **Conceptual Design** **September 2011**
   Schematic Design **September 2011**

   Elements:

   Traffic flow and parking
   Site orientation
   Building Height
   Massing
   Floor plans with elevations
   Roof lines
   HVAC/mechanical placements
   Entrance Design

2. **Design Development** **February 2012**
   Exterior/Con Docs **February 2012**
   Final Approval **February 2012**

   Elements:

   Approval of Exterior Materials and Colors
   Approval of Roof Material and Color
   Approval of Sidewalks and Ramps
   Approval of Preliminary Landscaping
   Approval of Playground Areas
   Approval of Joint Use Spaces
   Review of Typical Classroom Layout
   Approval of Storm Water Drainage Plan

Community Meetings

1. **Sullivan's Island Community Meeting #1 - September 2011**
2. **Sullivan's Island Community Meeting #2 - January 2012**
3. **Sullivan's Island Community Meeting #3 - May 2012**

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13. BUILDING INSPECTION. All building inspections, including the approval of the plans and specifications, shall be the sole responsibility and obligation of the Tenant and of the State of South Carolina, Department of Education, who shall approve all plans and inspect all construction in accordance with Code Requirements of as set for in the S.C. School Facilities Planning and Construction Guide. It shall be the sole obligation and responsibility of State Superintendent of Education to approve construction and issue a certificate of occupancy at the completion of construction, prior to the occupation and use of the school building. The Town of Sullivan's Island may, but shall have no obligation to, require further inspections prior to occupancy, all at the expense of the Tenant. Notwithstanding any provisions here, the Town of Sullivan's Island shall not be responsible for the design, construction, maintenance or inspection of the new school and the Town of Sullivan's Island shall not be responsible for any future design, construction, maintenance or inspection of the new school.

14. DEMOLITION. The Tenant shall be required to apply for a demolition permit from the Town of Sullivan's Island prior to demolition of the existing structure on the Leased Property in accordance with the requirements of the Town of Sullivan's Island.

15. FUTURE CONSTRUCTION, RENOVATIONS, MAJOR ALTERATIONS. All future construction, renovations and major alterations shall be subject to the same procedures contained herein for the design and construction of the new school, subject to final approval by the Town of Sullivan's Island and any zoning provisions now existing or to be adopted by the Town.

16. HISTORIC STRUCTURES AND SITES. The Zoning Ordinance of the Town of Sullivan's Island provides for the creation of an Historic Preservation Overlay District, designed

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to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town. The Town has determined that the historic, architectural, cultural and aesthetic features of the Town represent valuable resources. Tenant agrees to conduct a survey of adjacent historic properties to the Leased Property and to promote, preserve, protect and enhance those structures and sites in accordance with the Zoning Ordinance of the Town and in compliance with all federal, state and local laws.

17. PROTECTION AND RESPONSIBILITY FOR NEIGHBORING PROPERTIES. During construction of the new school and thereafter, the Tenant shall at all times be responsible for any and all damages incurred by neighboring and adjacent properties, specifically including historic properties and sites. The Tenant, its contractors, agents and employees shall take precautions to avoid any damage to the neighboring and adjacent properties, and historic properties and sites. The Tenant shall be obligated to report to the Landlord any and all damages resulting from the construction and operation of the new school.

18. JOINT USE FACILITIES.

The parties agree to explore joint use of the school facilities and joint use of Town property including green areas for parking, public library improvements, auditorium and meeting room uses, landscaping adjacent areas and entrances, summer campus uses, gardening projects, recreational use agreements, joint use and improvements to tennis courts with Tenant financial contribution, Battery Gadsden, joint recycling programs and improvements to access and egress routes with Tenant financial contributions.

19. ENVIRONMENTAL COMPLIANCE BY TENANT. Tenant agrees, that under all circumstances, Tenant shall comply with all federal, state and local laws, ordinances, rules and regulations which are applicable, as to the conduct of Tenant's business as it relates to the

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environment, including but not limited to, spillage, pollution and storage. Tenant shall not use, store or generate hazardous substances, as that term is otherwise defined in this Lease, at the Leased Property. Tenant will indemnify and hold harmless Landlord, its partners, its employees and agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, cost or expense of any kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to acts and omissions of Tenant, Tenant's officers, directors, employees, agents, contractors, subcontractors and invitees with respect to (i) the generation, manufacture, or operations involving transport, treatment, storage, handling, production, processing, disposal, release of any hazardous materials which are on, from or affecting the premises, including without limitation, the soil, water, vegetation, building and improvements on the premises; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached, or governmental order relating to such hazardous materials; and (iv) any violations of laws, orders, regulations, requirements or demands of governmental authorities which are based upon or related to such hazardous materials including, without limitation, attorneys and consultants fees, investigation and laboratory fees, court costs, and litigation expenses. This indemnification will survive this Lease.

20. LIENS. Tenant shall not create any liens for labor or materials against Landlord's or Tenant's interest in the premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only to secure the payment of any bill for work done or material furnished during the rental period of this lease. In

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the event that liens are placed on record against the premises by contractors, mechanics, laborers, material suppliers or others because of any action by Tenant, such placement of liens shall constitute a default of this lease by Tenant, unless said lien(s) are bonded by Tenant and removed from said premises within fourteen (14) days. Tenant shall require a written waiver of liens from all laborers, material suppliers, contractors, mechanics or others releasing any claim to Landlord's interest in said premises.

21. DAMAGE OR DESTRUCTION. In the event any of the structures located, or to be located, on the Leased Property are damaged and require replacement, the requirements of this Lease shall apply to any new structures or improvements being made to the property in the future.

22. INFRASTRUCTURE/IMPACT FEE. The Tenant acknowledges and agrees that any additional costs incurred during construction by the Town shall be paid by the Tenant to the Landlord upon the Landlord forwarding any invoices to the Tenant. In lieu of paying the Landlord for the impact on the infrastructure, Tenant will pay to Landlord $175,000.00 for an Impact Fee. A tree mitigation plan will be submitted to and subject to approval by Town Council of the Town of Sullivan's Island.

23. TRAFFIC FLOW. The Tenant acknowledges and agrees that car traffic entering the School will enter and exit from I'On Avenue, and buses will enter and exit through Atlantic Avenue. After initial approval by Landlord, any changes to the traffic pattern by the Tenant must be approved in writing by the Landlord. It is understood and acknowledged by the Tenant that access and egress routes to the new school are not part of the Leased Property. The Town of Sullivan's Island shall have the sole discretion to adjust the egress and access to the new school, as it shall determine necessary from time to time, after consultation with the Tenant based on

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public safety considerations. The Tenant shall maintain all roads primarily used for access and egress to school campus including Leased Property and easements.

24. TERMINATION OF EXISTING LEASE. Upon the execution of this Lease, the Landlord and the Tenant agree to execute a Termination of Lease, terminating that certain Lease entered in and by and between the State of South Carolina and School District Number 2 Charleston County the 23rd day of April, 1954.

25. INSURANCE TO BE PROVIDED BY TENANT

(a.) Coverage and Amount. During the Term, Tenant shall maintain policies of insurance at its sole cost and expense as follows:

(i) Commercial General Liability Insurance, including property damage, insuring Tenant and with Landlord as an additional insured (and any Mortgagee or other person or persons whom Landlord may reasonably designate, called "Additional Insured" in this Lease) from and against claims, demands, actions, or liability for injury to, or death of any persons and for damage to property arising from or related to the use or occupancy of the Premises or the operation of Tenant's business. This policy must contain, but not be limited to, coverage for premises and operations, products and completed operations, maintenance and use of owned, non-owned, or hired automobiles, bodily injury, and property damage. The policy must have limits in an amount not less than $1,000,000.00 per occurrence and $2,000,000.00 in the aggregate. This insurance will include a contractual coverage endorsement insuring the performance by Tenant of its indemnity agreements contained in this Lease.

(ii) Tenant may, at its option, obtain insurance policies covering its furnishings, fixtures, equipment and articles of personal property (collectively, "Personal Property") in the Leased Property, and Tenant shall either cause Landlord to be named as an insured party under

such policies (without entitling Landlord to receive any loss proceeds thereof) or obtain the insurer's waiver of all rights of subrogation against Landlord with respect to losses insured under such policies. Landlord shall have no liability for any damages incurred to any of Tenants furnishings, fixtures, equipment and articles of personal property in the Leased Property.

Tenant shall provide to Landlord prior to commencing any demolition or other activities pursuant to this lease, certificate(s) of insurance evidencing the insurance required pursuant to this Section 25.

(b.) Recognized Insurance Companies All insurance provided for in this paragraph shall be effected under valid and enforceable policies issued by insurers which are licensed to do business in the State of South Carolina and shall be written on the standard policies of such companies and shall provide for no deductible in excess of $100,000.00 ($250,000.00 as to flood insurance, as applicable) if available at reasonable cost. Tenant shall be responsible for any deductible.

(c.) Landlord's Non-Liability, Tenant's Own Insurance Other than for loss or damage caused by or resultant from the gross negligence or willful misconduct of Landlord, Tenant hereby waives all right of recovery which it might have against Landlord, Landlord's agents and employees, for loss or damage to Tenant's furniture, furnishings, fixtures, equipment, chattels and articles of personal property located on the Leased Property, nor shall Landlord be liable for any business interruption, or injury to or death of persons occurring in the Leased Property, or in any manner growing out of or in connection with Tenant's use and occupation of the Leased Property or the condition thereof, notwithstanding that such loss or damage may result from the negligence or fault of Landlord.

Tenant shall advise Landlord promptly of the applicable provisions of such insurance policies and notify Landlord promptly of any cancellation or change therein.

All insurance carried by Tenant as to the Leased Property or as to any property located thereon or therein, whether or not such insurance is carried pursuant to this Lease, shall provide that the insurer waives all right of subrogation against Landlord with respect to losses insured under such policies.

26. INDEMNITY. Tenant is and shall be in exclusive control and possession of the Leased Property as provided herein, and Landlord shall not be liable for any injury or damage to any property or to any person happening on or about the Leased Property, nor for any injury or damage to the Leased Property, nor to any property of Tenant, or of any person contained therein except as a result of the gross negligence of Landlord or Landlord's employees, agents, contractors, licensees and invitees.

Tenant shall indemnify and save Landlord harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including reasonable attorneys' fees) which may be imposed upon, incurred by or asserted against Landlord by reason of:

(i) Any work or thing done in, on or about the Leased Property or any part thereof;

(ii) Any use, occupation, condition, operation of the Leased Property or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto or any occurrence on any of the same;

(iii) Any act or omission on the part of Tenant or any subtenant or any employees, licensees or invitees;

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(iv) Any accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Property; or any part thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway or space adjacent thereto; and

(v) Any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease, or recording of this Lease. The provisions of this paragraph shall survive the expiration or earlier termination hereof.

Nothing contained herein shall be construed as an indemnification for injury to persons arising as a result of the gross negligence or willful misconduct of the Landlord.

28. FIRE INSURANCE RATE AND REQUIREMENTS. Tenant agrees, at its own cost and expenses, to comply with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction and any similar body, and the insurance company insuring the building.

29. ACCRETED LAND EDUCATIONAL PROGRAMS. Subject to existing laws and restrictions as applicable to the accreted land, the Tenant and the Landlord shall jointly develop and implement educational programs for students in the accreted land. It shall be the obligation of the Tenant to pay the costs of implementing such plans as are mutually agreed upon by the parties. Such plans shall be developed prior to completion of the construction of the new school so that these teaching areas in the accreted land will be available for use upon occupancy of the new school.

30. ZONING ENFORCEMENT POWERS. The parties hereby agree that all enforcement powers of the Town of Sullivan's Island, as contained in the Zoning Ordinance of the Town of Sullivan's Island, shall apply to the Leased Property and the construction, operation, occupancy, and use of the new school as if the Leased Property were zoned in any zoning

Record on Appeal 458

category of the Zoning Ordinance. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to use any and all enforcement procedures of the Zoning Ordinance of the Town of Sullivan's Island on the Leased Property in its sole discretion.

31. ZONING. Notwithstanding any other provision in this lease agreement and notwithstanding any uncertainty of the zoning of the Leased Property, the Town of Sullivan's Island shall retain the unrestricted right, authority and power to zone and to rezone the demised property. In the event of any conflict between the provisions of this lease agreement and the Zoning Ordinances of the Town of Sullivan's Island, the provisions of this lease plus the enforcement powers of the Zoning Ordinances shall apply, plus any new applicable provisions of the Zoning Ordinance. PROVIDED, HOWEVER, it is hereby acknowledged and agreed by Landlord and Tenant that for all purposes and in all respects the Leased Property shall be and is grandfathered under the Zoning Ordinances of the Town of Sullivan's Island (whether now existing or hereinafter enacted). To confirm and clarify by way of example only and not in limitation of the foregoing proviso, in the event of partial or full destruction of or damage to the school facilities constructed on the Leased Property by Tenant, provided that the plans and reconstruction, repair or replacement of the facilities necessary to restore such structures and improvements to what existed prior to the damage or destruction comply with the requirements set forth in this lease, the new structures and/or improvements shall be deemed in compliance, regardless of any rezoning of the Leased Property or any new applicable provisions of the Zoning Ordinances of the Town of Sullivan's Island.

32. LEGAL EXPENSES. If suit shall be brought or claim shall be made (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Property, and/or for the recovery of rent or any other amount due under provisions of this Lease, or because of any other covenant contained herein, and the breach is established, the prevailing party, in addition to all other sums and relief obtained, shall be entitled to all expenses incurred therefore, including reasonable attorneys' fees and costs.

33. TIMELINESS AND DEADLINES.

Time is of the Essence in all matters in this Lease Agreement.

34. WAIVER OF RIGHTS. No failure of Landlord or Tenant to exercise any power given Landlord or Tenant hereunder, or to insist on the other party's strict compliance with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

35. SECTION HEADINGS. The section headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no ay to be construed to be part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

36. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged into this Agreement. This Agreement may be changed or supplemented only by an instrument in writing signed by both parties.

37. ADDITIONAL INSTRUMENTS. The Parties agree to execute and deliver any instrument in writing necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever occasion shall arise including the execution of a short form memorandum of lease agreement which may be recorded at the Charleston County RMC Office by Tenant at its expense.

38. NOTICE. Any notices or demand required or permitted by law, or any provision of this Lease, shall be in writing, and shall be deemed to be received by Landlord when personally delivered to Landlord, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to the Town of Sullivan's Island, 1610 Middle Street, Sullivan's Island, SC 29482, or at such other address as Landlord may hereafter designated in writing to Tenant.

Any notice or demand to be served upon the Tenant shall be in writing and shall be deemed to be received by Tenant when personally delivered to Tenant, or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed to Tenant at 75 Calhoun Street, Charleston, South Carolina 29401, Attn: Superintendent of Schools, or at such other address as Tenant may hereafter designate in writing to Landlord.

39. GOVERNING LAW: ENFORCEMENT. This Agreement shall be governed by the laws of the State of South Carolina. If either party enforces the terms of this Lease by legal proceedings, the prevailing party in such proceedings shall be entitled to reimbursement from the other party to all reasonable costs and expenses incurred by the prevailing party in connection therewith, including reasonable attorney's fees, at all trial and appellate levels.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date stated above.

Witness #1 Gerald A. Kaynard

Witness #2 Mary Jane Watson

Town of Sullivan's Island

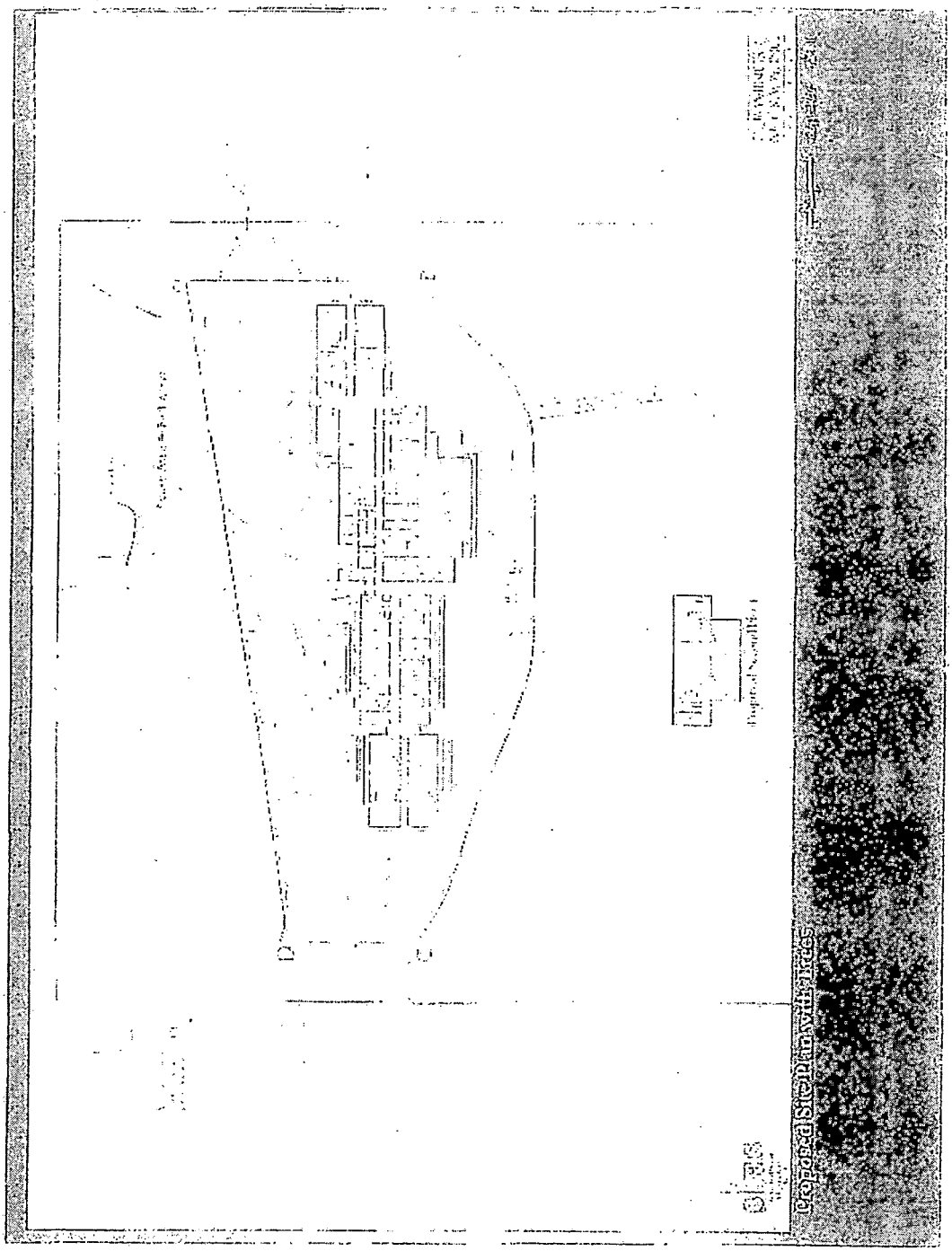
BY: Michael Perkis
ITS: Mayor Pro Tempore
Town of Sullivan's Island
October 18, 2011

Witness #1

Witness #2

Charleston County School District

BY:
ITS:





RESOLUTION

A RESOLUTION TO [illegible] SULLIVAN'S ISLAND ELEMENTARY SCHOOL.

WHEREAS, the Charleston County School District has operated the fifth successful Sullivan's Island Elementary School on Sullivan's Island for over 50 years; and,

WHEREAS, the Town of Sullivan's Island has contributed to the operation of this school through a long term no cost lease of [illegible] of town owned property; and,

WHEREAS, the members of Council recognize that the strength of the Town is found in its residents, and the sense of community that is enhanced by a local school; and,

WHEREAS, a core component of a local family community is its local elementary school that will create a safe and trusted environment in which children can learn, socialize and personally grow while contributing to the Town; and,

WHEREAS, the members of Council view the school as a valuable asset of the Town, and desire that the elementary school remain on Sullivan's Island.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Sullivan's Island pledges its support and commitment to the Charleston County School District in the efforts to maintain the school on Sullivan's Island.

[illegible] the Town Council of Sullivan's Island pledges its partnership with the Charleston County School District to promote the [illegible] Preschool at Sullivan's Island Elementary School.

Passed this 19th Day of January, 2016.

Witness the Mayor's Hand and Seal

Patrick Smith, Mayor

Attest:

Ellen McQuillen, Town Clerk

Andy Benke, Town Administrator

TO: Board of Trustees

FROM: [illegible]

DATE: August 13, 2014

SUBJECT: [illegible]

RECOMMENDATION: [illegible]

The material is submitted for: ☒ Vote ☐ Information
☐ Open ☒ Executive

Respectfully submitted:

Nancy J. McGinley, Ed.D
Superintendent of Schools

Michael L. Bobby
Chief Financial and Operations Officer

J. Douglas Gepford, Ph.D.
Chief Academic Officer

William Lewis
Chief Operating Officer, Capital Programs

Cindy Bohn Coats
Chair, Audit & Finance Committee

☐ Item voted on and recommended for Board approval by the A&F Committee on _____

Elizabeth Moffly
Chair, Policy Committee

☐ Item voted on and recommended for Board approval by the Policy Committee on _____

Capital Projects

August 15, 2011

TOPIC:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

BACKGROUND:

On March 27, 2006 by Item 9.4 the Board approved the construction and budget for the New Sullivan's Island Elementary School. As part of the 2005-2009 Capital Building Program, CCSD Board of Trustees approved the advance design for a new Sullivan's Island Elementary School to design development phase. The Board of Trustees approval to replace the existing school versus renovations and additions to the existing facility came after schematic design of the renovation and addition project as well as the finalization of the seismic analysis. The estimate of that scope of work deemed the project un-executable because the value of the improvements exceeded 50% of the appraised value of the facility, thereby, requiring that all buildings must be upgraded to current building codes and FEMA requirements.

Because the original scope of work was deemed un-executable, CCSD Board of Trustees approved the construction of a new facility on the existing site utilizing reserves and construction savings from the 2005-2009 Capital Building Program. Prior to the Board of Trustees approving the replacement of the existing facility, it was requested by CCSD to the Town of Sullivan's Island that a "Memorandum of Understanding/Resolution" be given to CCSD stating they were in total agreement to extend the lease to allow CCSD to construct the new facility on the existing site (see attached Resolution of the Town of Sullivan's Island dated January 19, 2010).

Over the past several months Staff, Architect (Cummings & McCrady) and the Program Manager, (Cumming/SMG) have been working with the Town of Sullivan's Island to resolve, in advance, any potential issues the Town of Sullivan's Island could impose that would affect the design or construction of the new facility. Concurrently, CCSD Staff, CCSD's Real Estate Attorney (Clawson & Staubes), and C/SMG have been working with Town of Sullivan's Island Town Administrator to finalize the New Lease for the property.

On July 9, 2011, CCSD Staff, Architect, and Program Manager presented to Council, in Executive Session, CCSD's concerns with the draft proposed lease as submitted by The Town of Sullivan's Island.

The Town of Sullivan's Island noted CCSD's concerns and on August 3, 2011; CCSD received a revised draft lease addressing most all of CCSD's concerns noting only minor changes.

CCSD's Staff, Legal Counsel (Clawson & Staubes), Architect, and Program Manager have been successful in negotiating the final lease addressing both CCSD and The Town of Sullivan's Island concerns.

DISCUSSION:

The lease needs to be approved so the Architect can move forward with design and approvals. Also, CCSD needs to approve the lease in advance of The Town of Sullivan's Island formally approving at their August 16, 2011 Council Meeting.

RECOMMENDATION:

Approve Seventy-Five (75) Year Property Lease with the Town of Sullivan's Island as attached in the amount of $10.00.

FUNDING SOURCE/COST:

No additional funds are required.

FUTURE FISCAL IMPACT:

None

DATA SOURCES:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

PREPARED BY:

William H. Lewis, Charleston County School District
Rick W. Holt, Cumming/SMG

REVIEWED BY LEGAL SERVICES

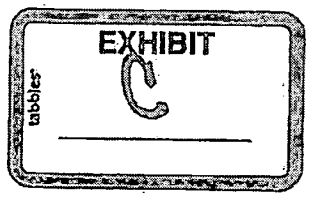
Matthew Moore, Clawson & Staubes

REVIEWED BY PROCUREMENT SERVICES

Lawrence Lutrario

ATTACHMENTS

1. Resolution of The Town of Sullivan's Island dated January 19, 2010
2. Lease



Town of Sullivan's Island, South Carolina
Ordinance No. 2011-05

An Ordinance to Amend the Ordinances of the Town of Sullivan's Island, South Carolina, Chapter 14, By Adding a New Section 34 to read as follows:

Section 14-34 The Lease of Certain Real Property to the Charleston County School District

WHEREAS, the Town of Sullivan's Island is the owner of certain real property as described in the Lease Agreement attached (Exhibit 1) and reflected in Exhibit "A" of said Lease; and

WHEREAS, the Charleston County School District is presently leasing the above described property and desires to control the property for a longer term and terminate its existing lease; and

WHEREAS, the Town of Sullivan's Island desires to lease said property to the Charleston County School District and finds that the lease of the property in accordance with the terms and conditions of the Lease Agreement is in the best interest of the Town and its citizens;

NOW THEREFORE, BE IT ORDAINED by the Town Council of Sullivan's Island in meeting duly assembled, that the Town of Sullivan's Island lease to the Charleston County School District all that real property described in said Lease Agreement, pursuant to the terms and conditions of the Lease Agreement; and

BE IT FURTHER ORDAINED that the Mayor or Mayor Pro-Tem of the Town of Sullivan's Island is hereby directed and authorized to execute the said Lease Agreement and other necessary documents to complete the transaction.

This Ordinance shall take effect immediately upon its ratification.

Michael Perkis, Mayor Pro Tempore

ATTEST:

Ellen Miller, Town Clerk

First Reading: August 16, 2011
Second Reading: September 12, 2011
Third Reading: September 20, 2011
Ratification: October 18, 2011

THE STATE OF SOUTH CAROLINA

MEMORANDUM OF AGREEMENT later THE STATE OF SOUTH CAROLINA and SCHOOL DISTRICT NO. 2, of CHARLESTON COUNTY, the STATE OF SOUTH CAROLINA (sometimes known as MOULTRIE SCHOOL DISTRICT NO. 2, of CHARLESTON COUNTY):

WHEREAS, THE STATE OF SOUTH CAROLINA, acting by and through the State Budget and Control Board (hereinafter referred to as the Board), in pursuance of statutory authorization, did acquire from the UNITED STATES OF AMERICA certain property on Sullivans Island, included in which is the property hereinafter described, by deed dated March 6th, 1950, and recorded in the R.M. C. Office for Charleston County on May 15th, 1950, in Book Z-51, page 253; and,

WHEREAS, the said deed did, among other things, provide:

(1) That THE STATE OF SOUTH CAROLINA, as the grantee in said deed, should not sell, lease or otherwise dispose of any of the property conveyed by said deed within twenty (20) years from its date, without first obtaining the written authorization of the General Services Administrator of the United States, or his successor in function, to such sale, lease or other disposal;

(2) That for a period of twenty (20) years from the date of said deed, the premises therein conveyed be used continuously as and for an Historic Monument and for incidental purposes pertaining thereto, but for no other purpose; and,

(3) That the UNITED STATES OF AMERICA should have the right, during the existence of any National Emergency declared by the President of the United States or the Congress, to the full unrestricted possession, control and use of the premises, or any part thereof, without charge;

and,

WHEREAS, THE STATE OF SOUTH CAROLINA proposes that the property hereinbelow described, being a portion of the property included in the aforesaid deed, be leased to one of the public School Districts of South Carolina, viz., SCHOOL DISTRICT NO. 2, of CHARLESTON COUNTY, the STATE OF SOUTH CAROLINA, for a term of ninety-nine (99) years, upon the condition that the property herein leased be used for public school purposes, under such conditions as the said School District, acting in pursuance of the Laws of the State of South Carolina, shall from time to time

EXHIBIT tabbies 10

prescribed form as above mentioned; and

WHEREAS, the School District proposes to erect an expensive school building on the premises herein described, but cannot do so unless the consent of the UNITED STATES OF AMERICA be obtained to this lease, and the UNITED STATES OF AMERICA do agree that the land herein leased be discharged from the covenants set forth, supra; and,

WHEREAS, the UNITED STATES OF AMERICA has agreed to permit this lease, and to discharge the premises herein leased from the covenants set forth in the deed above recited, its consent thereto being endorsed hereon; and,

WHEREAS, the School District has agreed to the conditions imposed by THE STATE OF SOUTH CAROLINA, above recited,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS That THE STATE OF SOUTH CAROLINA, for and in consideration of the sum of ONE DOLLAR ($1) to it in hand paid at and before the sealing of these presents, the receipt whereof is hereby acknowledged, has leased, and, by these presents, does hereby lease unto SCHOOL DISTRICT NO. 2, of CHARLESTON COUNTY, the STATE OF SOUTH CAROLINA, and its successors and assigns, the following described property, shown on the plat herein referred to, and having the following metes, bounds, courses and distances:

Commencing at a point marked "A" above said point being Seven Hundred Eighty-three Feet (783') from the center line of Wharf Street, measured along the South right-of-way line of Lynn Street; thence South Twenty-five degrees (25°) Thirty Minutes (30') East for a distance of Two Hundred Five Feet (205') to a point marked "B"; thence along a line North Fifty-three degrees (53°) 00 Minutes (00') East, for a distance of Three Hundred Seventy-Six Feet (376') to a point marked "C"; thence along a line South Twenty-five degrees (25°) Thirty Minutes (30') East for a distance of One Thousand Thirty-nine Feet (1,039') to a point marked "D"; thence Southwardly along an irregular line, having approximately the same bearing "A" to "D" for a distance of approximately Nine Hundred Thirty-three Feet (933') to a point marked "E"; thence along a line North Twenty-five degrees (25°) Thirty Minutes (30') West for a distance of Seven Hundred Thirty-four Feet (734') to a point marked "F"; thence along a line North Fifty-four degrees (54°) Thirty Minutes (30') East Four Hundred Seventy-seven Feet (477') to a point marked "G"; thence

along a line North Twenty-five degrees (25°) Thirty minutes (30') West for a distance of Two Hundred Eleven Feet (211') to a point marked "F"; thence along a line North Sixty-four degrees (64°) Thirty minutes (30') East, a distance of 1,240 feet to the South-erly right-of-way line of Lee Street, for a distance of Two Hundred Four Feet (204') to the point of beginning; all of which is more particularly shown and delineated on a plat entitled "PLAT OF OLD BATTERY TRACT NO. 1, AREA, JOHNSONS ISLAND, CHARLESTON COUNTY, S.C., SHOWING PROPOSED AREA FOR SCHOOL SITE", made July, 1953, by J. B. Wilson, Reg. C. E. and S. S.

TO HAVE AND TO HOLD unto the said SCHOOL DISTRICT NO. 2, of CHARLESTON COUNTY, the STATE OF SOUTH CAROLINA, its successors and assigns, for a term of ninety-nine (99) years, to commence on the date hereof, and to terminate on the ninety-ninth anni-versary hereof.

By the acceptance of this Lease, the said School District hereby covenants and agrees that it will use the premises for public school purposes under such conditions as its Board of Trustees, acting in pursuance of the laws of South Carolina, shall from time to time prescribe, and for no other purposes. And, if the said School District shall violate the terms of this condition, then its rights hereunder shall forthwith cease and determine, and THE STATE OF SOUTH CAROLINA shall be entitled to forthwith re-enter and retake possession of the premises herein leased.

IN WITNESS WHEREOF, the parties hereto have caused these Presents to be executed by the proper officials, the 23rd day of April, A. D. 1954.

IN THE PRESENCE OF:

Witnesses as to James F. Byrnes, Jeff D. Bates, and R. C. Rhodes

THE STATE OF SOUTH CAROLINA, by the STATE BUDGET AND CONTROL BOARD

BY:

JAMES F. BYRNES, GOVERNOR

JOHN L. McLAURIN, STATE TREASURER

R. C. RHODES, COMPTROLLER GENERAL

IN THE PRESENCE OF:

IN THE PRESENCE OF:

IN THE PRESENCE OF:

SCHOOL DISTRICT NO. 2 OF CHARLESTON COUNTY, STATE OF SOUTH CAROLINA

BY: Catherine M. Bissell

ITS TRUSTEES

BOOK N58 PAGE 153

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me W. F. Prioleau, Jr., who, being duly sworn, deposes and says that he saw James F. Byrnes, Governor, Jeff B. Bates, State Treasurer, and E. C. Rhoden, Comptroller-General of the State of South Carolina, and members of the State Budget and Control Board, sign, seal, and as the act and deed of the State of South Carolina, deliver the foregoing Lease Agreement, and that he, with Cassie Connor, witnessed the execution and delivery thereof.

SWORN to before me this
23rd day of April, 1954.

(SEAL)
Notary Public for South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY appeared before me [illegible] who, being duly sworn, deposes and says that he saw Edgar A. Brown, Chairman of the Senate Finance Committee and member of the State Budget and Control Board, sign, seal, and as his act and deed of the State of South Carolina, deliver the within written Lease Agreement, and that he with [illegible] witnessed the execution and delivery thereof.

[signature]

SWORN to before me this
21st day of April, 1954.

[signature] (SEAL)
Notary Public for South Carolina

BOOK 458 PAGE 155

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

PERSONALLY appeared before me [redacted] who, being duly sworn, deposes and says that he saw Charlie Y. Tarrar, Chairman of the House Ways and Means Committee and member of the State Budget and Control Board, sign, seal and as the act and deed of the State of South Carolina, deliver the foregoing Lease Agreement, and that he with [redacted] witnessed the execution and delivery thereof.

[redacted]

SWORN to before me this
23rd day of April, 1954.

[redacted] (SEAL)
Notary Public for South Carolina

BOOK A-58 PAGE 156

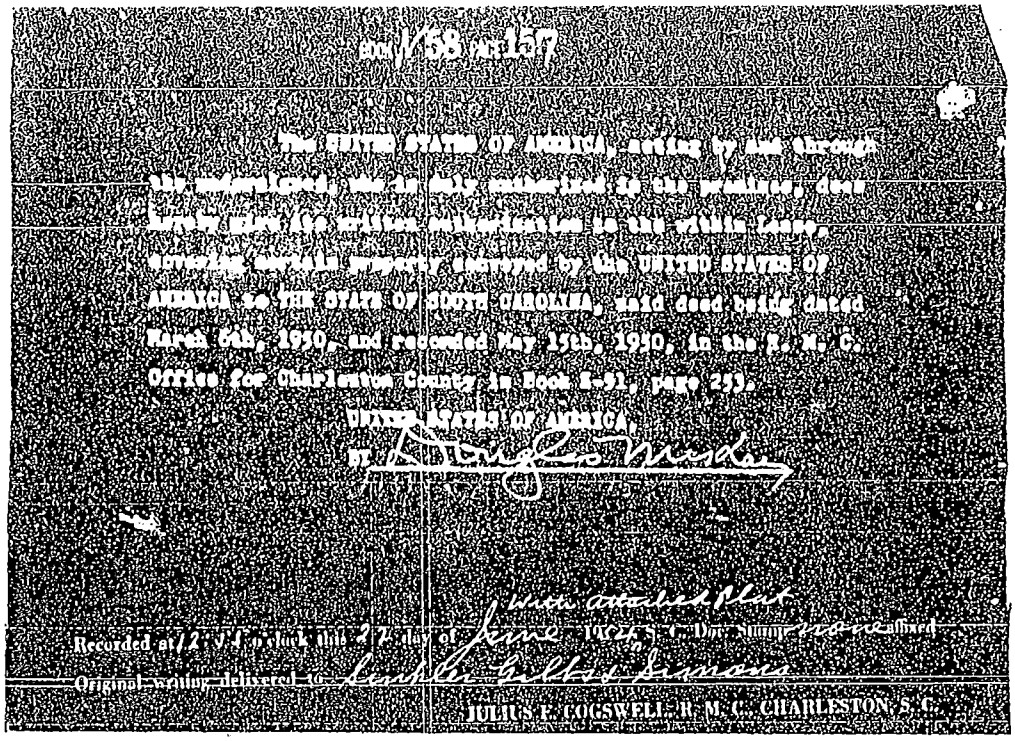
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me Georgia B. Herlong, who, being duly sworn, deposes and says that he saw the within-named Celia M. Lewis, Mary Allen Johnson, Inez H. Mouzon, Louise R. V. Pinckney as Trustees of SCHOOL DISTRICT NO. 2 OF CHARLESTON COUNTY, STATE OF SOUTH CAROLINA, sign, seal and as the act and deed of SCHOOL DISTRICT NO. 2 OF CHARLESTON COUNTY, STATE OF SOUTH CAROLINA, deliver the foregoing written Lease Agreement, and that he, with William D. Snowden witnessed the execution thereof.

Georgia B. Herlong

SWORN to before me this
24th day of April, 1954.

Ethel Cutler (SEAL)
Notary Public for South Carolina



Book V68 page 157

THE UNITED STATES OF AMERICA, acting by and through

[illegible], and for and in consideration of the sum of

[illegible] to it in hand paid at and before the sealing and

[illegible] by the UNITED STATES OF

AMERICA to THE STATE OF SOUTH CAROLINA, said deed bearing date

March 6th, 1950, and recorded May 15th, 1950, in the R. M. C.

Office for Charleston County in Book E-91, page 253.

UNITED STATES OF AMERICA

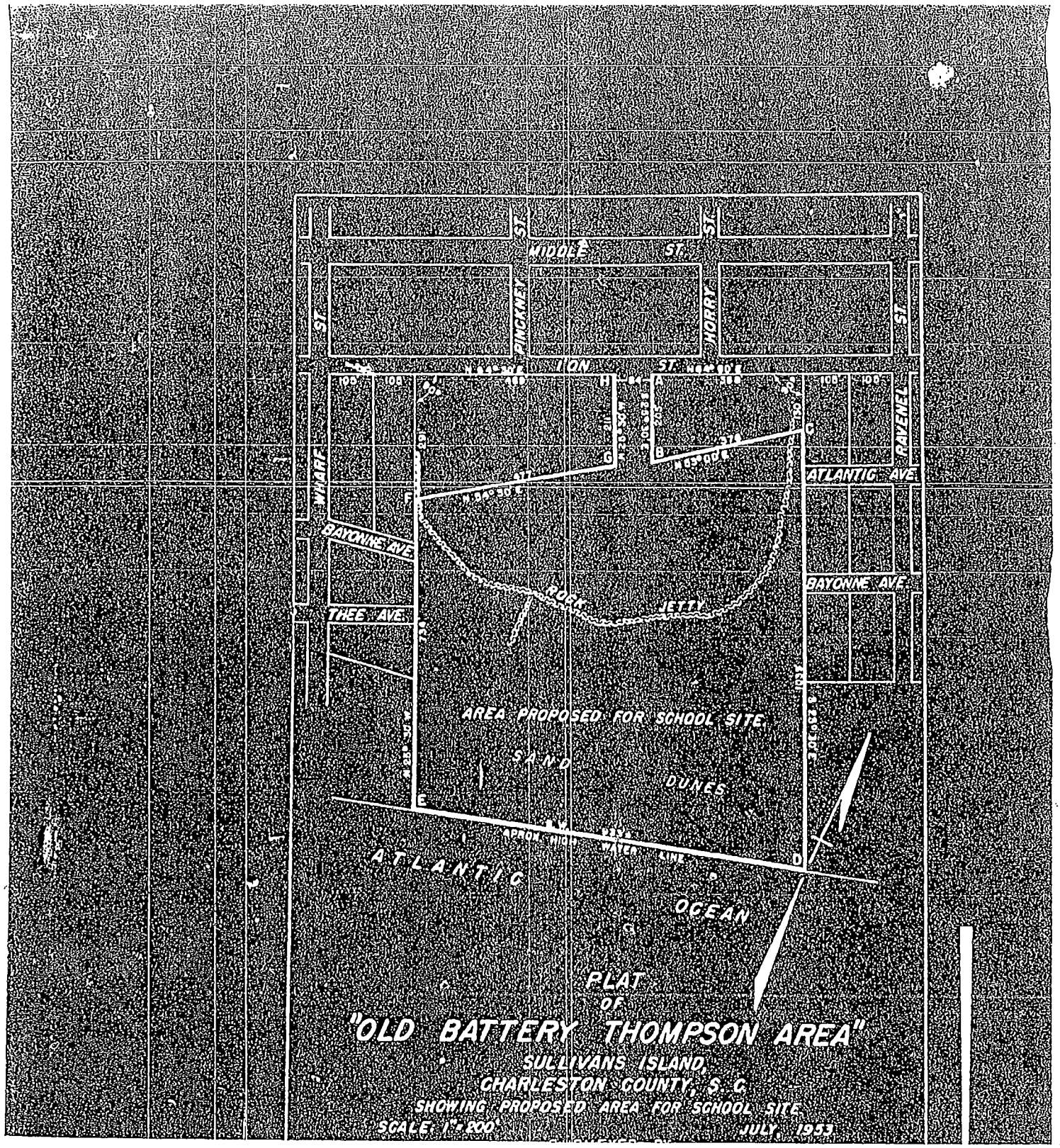
By [illegible]

With certificate of Plat

Recorded at 12:04 o'clock P. M. this 27 day of June 1951 S. C. D. Stamp affixed

Original certificate delivered to Lesesne Gilbert & Simons

JULIUS F. COGSWELL, R. M. C., CHARLESTON, S. C.


MIDDLE ST.
PINCKNEY ST.
HORRY ST.
RAVENEL ST.
ION ST.
ATLANTIC AVE.
BAYONNE AVE.
THEB AVE.
JETTY
AREA PROPOSED FOR SCHOOL SITE
SAND DUNES
ATLANTIC OCEAN
APPROX. HIGH WATER LINE
PLAT OF
"OLD BATTERY THOMPSON AREA"
SULLIVANS ISLAND
CHARLESTON COUNTY, S. C.
SHOWING PROPOSED AREA FOR SCHOOL SITE
SCALE 1" = 200'
JULY 1953

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 18, 2015.

J. Rutledge Young, III
Julie L. Moore
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 18, 2015.

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Julie L. Moore
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96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for Appellants

RECEIVED
JUN 05 2015
SC Court of Appeals

DUFFY & YOUNG LLC
96 BROAD STREET, CHARLESTON SC 29401
telephone 843-720-2044 facsimile 843-720-2047
ATTORNEYS AT LAW

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JUN 05 2015
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Martha Smith, et al. v. Town of Sullivan's Island
Civil Aciton No.: 2012-CP-10-6830
Appellate Case No.: 2014-002128

Dear Ms. Kitchings:

Please find enclosed for filing the following documents in the above-referenced appeal:

- 1 original unbound copy of Appellant's Final Brief;
- 15 bound copies of Appellant's Final Brief;
- 1 original unbound copy of Appellant's Final Reply Brief;
- 15 bound copies of Appellant's Final Reply Brief;
- Certificate of Counsel stating Appellant's Final Brief complies with Rule 211(b);
- Certificate of Counsel stating Appellant's Final Reply Brief complies with Rule 211(b);
- 1 original and 1 copy of Proof of Service of Appellants' Final Brief;
- 1 original and 1 copy of Proof of Service of Appellants' Final Reply Brief;
- 1 original unbound copy of the Record on Appeal; and
- 15 bound copies of the Record on Appeal.

I would appreciate it if you would please return one filed copy of each document to our office in the envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me.

lmarcotulli@duffyandyoung.com
WWW.DUFFYANDYOUNG.COM

Respectfully,

Liane Marcotulli
Legal Assistant

Enclosures
cc: G. Trenholm Walker, Esq. (*via U.S. mail*)
John P. Linton, Jr., Esq. (*via U.S. mail*)
Lawrence A. Dodds, Esq. (*via U.S. mail*)

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